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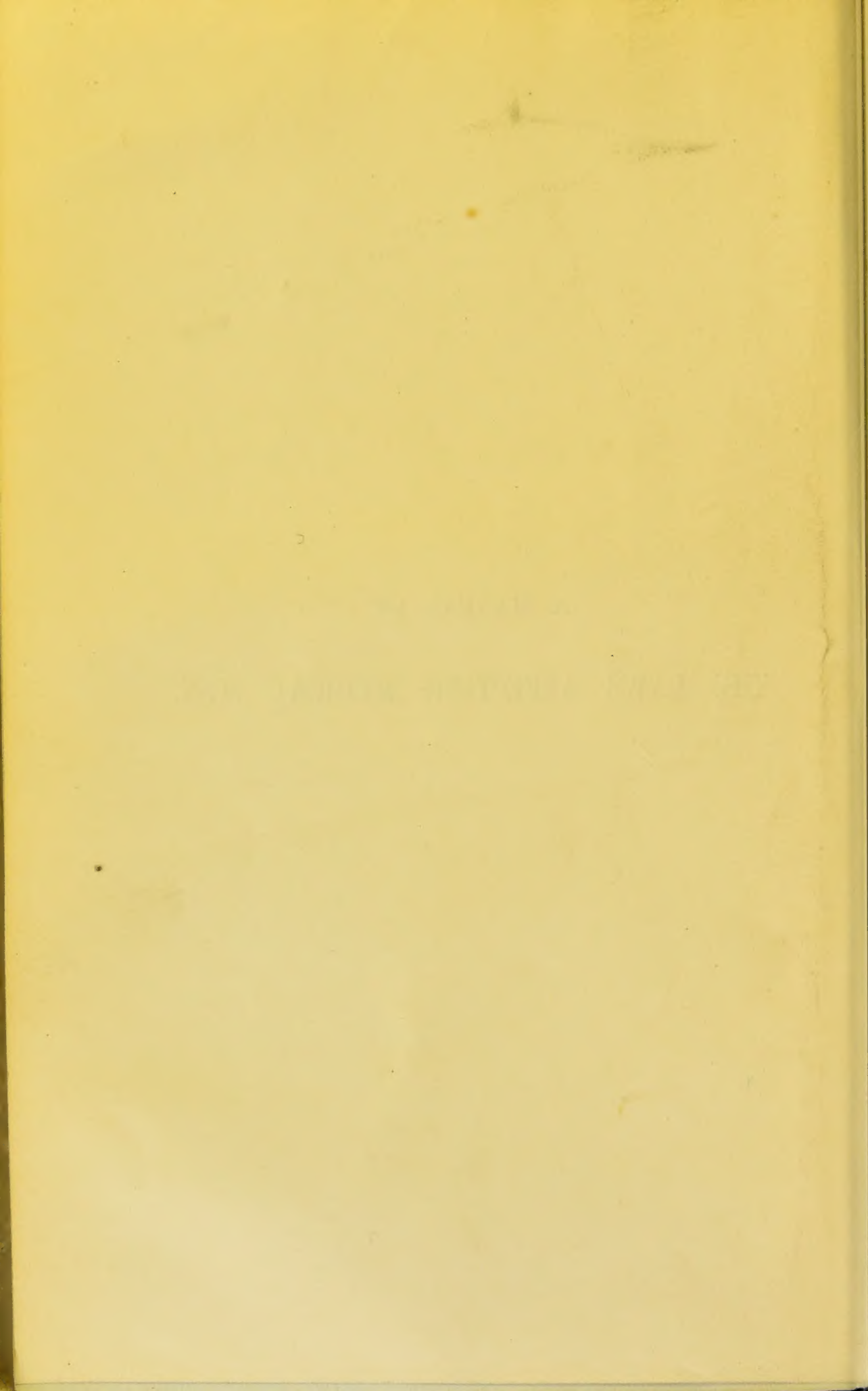






A MANUAL OF  
THE LAWS AFFECTING MEDICAL MEN.







# A MANUAL

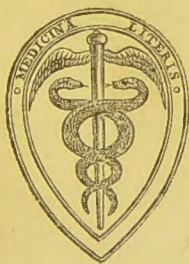
OF THE

## LAWS AFFECTING MEDICAL MEN.

BY

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## P R E F A C E.

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IN the following pages I have endeavoured to provide the medical profession with a handbook of the various laws which, directly or indirectly, affect its members. It has been my object to make the work as concise as possible, and to digest and arrange the subject in such a manner as to admit of easy reference.

I am not without hope that such a work may, at times, prove of service also to members of my own profession.

All the principal statutes, and parts of statutes, which relate to or affect medical men, are given in the body of the book, under the appropriate heads, with full references, and, therefore, I have not deemed it necessary to print them at length in the Appendix.

I take this opportunity of returning my best thanks to Dr. Carpenter, for his chapter on "Medical Etiquette," a subject necessary to the completeness



of the work, but on which I should not have presumed to write.

I trust that the Manual may be found useful by medical men; but I do not pretend that it will, on every occasion, obviate the necessity for consultation with a lawyer.

R. G. GLENN.

4, PLOWDEN BUILDINGS, TEMPLE,

*June, 1871.*

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## TABLE OF ABBREVIATIONS.

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### A.

A. and E., <i>or</i> Ad. and E.	..	..	Adolphus and Ellis's Reports.
Abr.	..	..	Abridgement.
Amer.	..	..	American.
Anon.	..	..	Anonymous case.
App.	..	..	Appellant.
Atkyn	..	..	Atkyn's Chancery Reports.

### B.

B.	..	..	..	Baron ( <i>e.g.</i> "Pigott, B." = Mr. Baron Pigott.)
Bac. Abr.	..	..	..	Bacon's Abridgement.
B. and Ad.	..	..	..	Barnewall and Adolphus's Reports.
B. and Ald.	..	..	..	Barnewall and Alderson's Reports.
Barb.	..	..	..	Barbour's Supreme Court Reports (New York).
B. and C.	..	..	..	Barnewall and Cresswell's Reports.
Beat.	..	..	..	Beatty's Chancery Reports (Ireland).
Beav.	..	..	..	Beavan's Rolls Court Reports.
Bing.	..	..	..	Bingham's Reports.
Bing. N. C.	..	..	..	Bingham's New Cases.
Bl. Com.	..	..	..	Blackstone's Commentaries.
Bl. R.	..	..	..	Mr. Justice Blackstone's Reports.
B. and P.	..	..	..	Bosanquet and Puller's Reports
B. and P. N. R.	..	..	..	Bosanquet and Puller's New Reports.
Brit.	..	..	..	Britton.
B. and S., <i>or</i> Best and S.	..	..	..	Best and Smith's Reports.
Bull. N. P.	..	..	..	Buller's Nisi Prius.
Buls.	..	..	..	Bulstrode's Reports.
Burr.	..	..	..	Burrow's Reports.
By.	..	..	..	Bankruptcy Cases.

### C.

Camp.	..	..	..	Campbell's Nisi Prius Reports.
Car. and M.	..	..	..	Carrington and Marshman's Reports.
C. B.	..	..	..	Common Bench Reports ( <i>or</i> Manning, Granger and Scott's Reports).

C. B., N. S.	..	..	..	..	Common Bench Reports, New Series.
C. B. ( <i>after a name</i> )	..	..	..	..	Chief Baron.
Cha.	..	..	..	..	Chancery.
Chitt.	..	..	..	..	Chitty's Reports.
C. J.	..	..	..	..	Chief Justice.
C. and K., <i>or</i> Car. and Kir.	..	..	..	..	Carrington and Kirwan's Nisi Prius Reports.
Clark and Fin.	..	..	..	..	Clark and Finnelly's House of Lords Reports.
C. and M., <i>or</i> Cr. and M.	..	..	..	..	Crompton and Meeson's Reports.
Co., <i>or</i> Coke	..	..	..	..	Coke's Reports.
Coll.	..	..	..	..	Collyer's Chancery Reports.
Comb.	..	..	..	..	Comberbach's Reports.
Com. Dig.	..	..	..	..	Comyn's Digest.
Conn.	..	..	..	..	Connecticut Reports (American).
Cox, C. C.	..	..	..	..	Cox's Criminal Cases.
C. P.	..	..	..	..	Common Pleas.
C. and P., <i>or</i> Car. and P.	..	..	..	..	Carrington and Payne's Nisi Prius Reports.
Cro. Car.	..	..	..	..	Croke's Reports (Charles I.).
Cro. Eliz.	..	..	..	..	" " (Elizabeth).
Cur.	..	..	..	..	The Court.
Cur. Hawk.	..	..	..	..	Curwood's Edition of Hawkins's Pleas of the Crown.
Curt.	..	..	..	..	Curteis's Ecclesiastical Reports.

## D.

Dea.	..	..	..	..	Deacon's Bankruptcy Cases.
Dears. and B. C. C.	..	..	..	..	Dearsley and Bell's Crown Cases.
Dears. C. C.	..	..	..	..	Dearsley's Crown Cases.
De G. M. and G.	..	..	..	..	De Gex, MacNaghten, and Gordon's Chancery Reports.
De G. and Sm.	..	..	..	..	De Gex and Smale's Chancery Reports.
Den. C. C.	..	..	..	..	Denison's Crown Cases.
Dods.	..	..	..	..	Dodson's Admiralty Reports.
Doug.	..	..	..	..	Douglas's Reports.
Dowl. and L., <i>or</i> Dowl. and L. P. C.	..	..	..	..	Dowling and Lowndes' Practice Reports.
Dowl. P. C.	..	..	..	..	Dowling's Practice Cases.
D. and R.	..	..	..	..	Dowling and Ryland's Reports.
D. and R. N. P. C.	..	..	..	..	Dowling and Ryland's Nisi Prius Cases.
Dru.	..	..	..	..	Drury's Chancery Reports (Ireland).

## E.

East.	..	..	..	..	East's Reports.
E. and B., <i>or</i> El. and B.	..	..	..	..	Ellis and Blackburn's Reports.
Ed.	..	..	..	..	Edition.
E. and E.	..	..	..	..	Ellis and Ellis's Reports.
Esp.	..	..	..	..	Espinasse's Reports.
Ex. <i>or</i> Exch.	..	..	..	..	Welsby, Hurlstone, and Gordon's Exchequer Reports.



## F.

F. C.	..	..	..	..	Faculty Collection of Reports, Court of Session (Scotland).
F. and F.	..	..	..	..	Foster and Finlayson's Reports.
Forst.	..	..	..	..	Forster's Reports.
Freem.	..	..	..	..	Freeman's Reports.

## G.

G. and D.	..	..	..	..	Gale and Davison's Reports.
G. O.	..	..	..	..	General Order.
Godb.	..	..	..	..	Godbolt's Reports.
Greenleaf Ev.	..	..	..	..	Greenleaf on Evidence (American).

## H.

Hagg.	..	..	..	..	Haggard's Admiralty Reports.
Hale P. C.	..	..	..	..	Hale's Pleas of the Crown.
Ham.	..	..	..	..	Hammond's Ohio Reports (American).
Hare	..	..	..	..	Hare's Chancery Reports.
Hawk.	..	..	..	..	Hawkins's Pleas of the Crown.
H. and C.	..	..	..	..	Hurlstone and Coltman's Reports.
Het.	..	..	..	..	Hetley's Reports.
H. and N.	..	..	..	..	Hurlstone and Norman's Reports.

## I.

Ib.	..	..	..	..	<i>Ibidem</i> (the same).
Inst.	..	..	..	..	Institutes.
Ir.	..	..	..	..	Irish.
Ir. Com. L. Rep.	..	..	..	..	Irish Common Law Reports.
Ir. Law Rep.	..	..	..	..	Irish Law Reports.

## J.

J.	..	..	..	..	Justice ( <i>e.g.</i> "Park, J." = Mr. Justice Park).
Jo. and H.	..	..	..	..	Johnson and Hemming's Reports.
Jur.	..	..	..	..	The Jurist Reports.
Jur. N. S.	..	..	..	..	The Jurist Reports, New Series.

## K.

K. B.	..	..	..	..	King's Bench.
Keb.	..	..	..	..	Keble's Reports.
K. and J., <i>or</i> Kay and J.	..	..	..	..	Kay and Johnson's Reports.

## L.

L. C., <i>or</i> Lead. Cas.	..	..	..	..	Leading Cases.
Leon.	..	..	..	..	Leonard's Reports.
Lev.	..	..	..	..	Levinz's Reports.
Lew. C. C.	..	..	..	..	Lewin's Crown Cases.
Lit.	..	..	..	..	Littleton's Reports.
L. J.	..	..	..	..	The Law Journal Reports.
L. J. By.	..	..	..	..	" " " Bankruptcy.
L. J. Cha.	..	..	..	..	" " " Chancery.
L. J. C. P.	..	..	..	..	" " " Common Pleas.
L. J. Ex.	..	..	..	..	" " " Exchequer.
L. J. M. C.	..	..	..	..	" " " Magistrates' Cases.
L. J. N. S.	..	..	..	..	" " " New Series.
L. J. P. and M.	..	..	..	..	" " " Probate and Matrimonial.
L. J. K. B.	..	..	..	..	" " " King's Bench.
L. J. Q. B.	..	..	..	..	" " " Queen's Bench.
Lofft.	..	..	..	..	Lofft's Reports.
Ld. Ray.	..	..	..	..	Lord Raymond's Reports.
L. R., <i>or</i> Law Rep.	..	..	..	..	The Law Reports.
L. S.	..	..	..	..	<i>Locus sigilli</i> (Place of the seal).
L. T.	..	..	..	..	The Law Times Reports.

## M.

Mad.	..	..	..	..	Maddock's Chancery Reports.
Manning's Mich. R.	..	..	..	..	Manning's Michigan Reports (American).
M. C.	..	..	..	..	Magistrates' Cases.
M. and G.	..	..	..	..	Manning and Granger's Reports.
Mod.	..	..	..	..	Modern Reports.
Mo., <i>or</i> Moore.	..	..	..	..	Moore's Reports.
Moo. C. C.	..	..	..	..	Moody's Crown Cases.
Moo. and M.	..	..	..	..	Moody and Malkin's Reports.
Moo. P. C.	..	..	..	..	Moore's Privy Council Cases.
Moo. and R.	..	..	..	..	Moody and Robinson's Reports.
Mo. and Sc.	..	..	..	..	Moore and Scott's Reports.
M. and P.	..	..	..	..	Moore and Payne's Reports.
M. and S., <i>or</i> Maul. and S.	..	..	..	..	Maule and Selwyn's Reports.
M. and W., <i>or</i> Mee. and W.	..	..	..	..	Meeson and Welsby's Reports.
Myl. and C.	..	..	..	..	Mylne and Craig's Chancery Reports.
Myl. and K.	..	..	..	..	Mylne and Keene's Chancery Reports.

## N.

N.	..	..	..	..	Note.
N. C.	..	..	..	..	Notes of cases in the Ecclesiastical and Maritime Courts.
N. and M., <i>or</i> Nev. and M.	..	..	..	..	Neville and Manning's Reports.

N. and P.	..	..	..	..	Neville and Perry's Reports.
N. S.	..	..	..	..	New Series.
N. Y.	..	..	..	..	New York.

## P.

Par.	..	..	..	..	Paragraph.
P. C.	..	..	..	..	Pleas of the Crown.
Peake	..	..	..	..	Peake's Nisi Prius Reports.
Per cur.	..	..	..	..	<i>Per curiam</i> (By the Court).
Porter's R.	..	..	..	..	Porter's Alabama Reports (American).
P. and M.	..	..	..	..	Probate and Matrimonial Cases.
Price	..	..	..	..	Price's Reports.
P. W., or P. Williams	..	..	..	..	Peere Williams's Reports.

## Q.

Q. B.	..	..	..	..	Adolphus and Ellis's Queen's Bench Reports.
Q. V.	..	..	..	..	<i>Quod vide</i> (Which see).

## R.

R.	..	..	..	..	Regina or Rex.
Ray.	..	..	..	..	Lord Raymond's Reports.
Reg.	..	..	..	..	Regina.
Rep.	..	..	..	..	Repealed.
Resp.	..	..	..	..	Respondent.
Robert.	..	..	..	..	Robertson's Ecclesiastical Reports.
Russ.	..	..	..	..	Russell's Chancery Reports.
Russ. and Ry.	..	..	..	..	Russell and Ryan's Crown Cases.
Ry. and M. N. P. C.	..	..	..	..	Ryan and Moody's Nisi Prius Cases.

## S.

S.	..	..	..	..	Section.
Salk.	..	..	..	..	Salkeld's Reports.
Sayer	..	..	..	..	Sayer's Reports.
Sc.	..	..	..	..	Scott's Reports.
S. C.	..	..	..	..	Same case.
Sch.	..	..	..	..	Schedule.
Scott New Rep.	..	..	..	..	Scott's New Reports.
Searle and Smith	..	..	..	..	Searle and Smith's Probate and Divorce Cases.
Semb.	..	..	..	..	<i>Semble</i> (Seems).
Sess.	..	..	..	..	Session.
Show.	..	..	..	..	Shower's Reports.
Sid.	..	..	..	..	Siderfin's Reports.
Sim.	..	..	..	..	Simons's Chancery Reports.
Sir W. Jones	..	..	..	..	Sir William Jones's Reports.
Sm. and G.	..	..	..	..	Smale and Giffard's Chancery Reports.
Sm. L. C.	..	..	..	..	Smith's Leading Cases.

Stark.	..	..	..	..	Starkie's Nisi Prius Reports.
Stra.	..	..	..	..	Strange's Reports.
St. Tr.	..	..	..	..	State Trials.
Sty.	..	..	..	..	Style's Reports.
S. V.	..	..	..	..	<i>Sed vide</i> (But see).
Sw. and Tr.	..	..	..	..	Swabey and Tristram's Reports.

## T.

Taun.	..	..	..	..	Taunton's Reports.
Tit.	..	..	..	..	Heading.
T. R.	..	..	..	..	Term Reports (Durnford and East).
Trans.	..	..	..	..	Translated.
Tyr.	..	..	..	..	Tyrwhitt's Reports.

## V.

V.	..	..	..	..	<i>Vide</i> (See).
Vent.	..	..	..	..	Ventris's Reports.
Ves.	..	..	..	..	Vesey's Chancery Reports.
Viner's Abr.	..	..	..	..	Viner's Abridgement.

## W.

Whart.	..	..	..	..	Wharton's Pennsylvania Reports (American).
Wils.	..	..	..	..	Wilson's Reports.
W. N. 1871	..	..	..	..	The Weekly Notes for the year 1871.
W. R.	..	..	..	..	The Weekly Reporter.

## Y.

Y. and Coll.	..	..	..	..	Younge and Collyer's Equity Exchequer Reports.
Y. and Coll. C. C.	..	..	..	..	Younge and Collyer's Chancery Cases.
Yelv.	..	..	..	..	Yelverton's Reports.



# A MANUAL

OF THE

## LAWS AFFECTING MEDICAL MEN.

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### CHAPTER I.

#### PRELIMINARY.<sup>1</sup>

THE history of Surgery is almost synonymous with that of humanity. The fact that man is born to trouble, as the sparks fly upwards, is attested alike by revelation and reason, and the first and last of his troubles require the help of his fellow-man, skilled in the arts of medicine and surgery. Bacon, a keen observer as well of men as of morals, pithily puts it, "I should think Nature should do me great wrong if I should be so long in dying as I was in being born." We have little temptation to dwell on the scanty but always honourable mention made of physicians in those books with which we are all familiar. We pass by the record of Hezekiah's cure by the application of a fig poultice, and the legends of the siege of Troy, to arrive the quicker

<sup>1</sup> See, generally, "The History of Physic from the time of Galen to the beginning of the 16th Century," by Dr. J. Friend, 1727; "The History of Medicine, Surgery, and Anatomy, from the Creation of the World to the commencement of the 19th Century," by W. Hamilton, 1831; "A History of Medicine," by Dr. J. Bostock, in the "Cyclopædia of Practical Medicine," vol. i.; Turner's "History of the Anglo-Saxons," 1807; "Leechdoms, Wortcunning, and Starcraft of early England," by the Rev. Oswald Cockayne, 1864; "Biographical Memoirs of Medicine in Great Britain, from the revival of Literature to the time of Harvey," by J. Aikin, 1780; "A Book about Doctors," by J. C. Jeaffreson, 1860; "Lives of British Physicians," Family Library, vol. xiv., 1830.

at the status of medicine men in our country. There is but one aphorism which we cannot forbear from quoting, as true in some measure of all doctors in all lands—"To the sick, angels; to convalescents, men; to recovered patients, devils;" such is the cynical German proverb.

It is impossible in any view of Celtic history, however cursory, to avoid mention of our ubiquitous friends the Druids, who, if they are sometimes charged with sacrificing human life, are occasionally credited with some attempts at its preservation. Borlase tells us that the Druids practised medicine and surgery, and that they were skilled in anatomy, physic, and augury. The element of magic seems to have entered largely into their repertory of nostrums. They employed charms and medicinal agents, and practised the simpler operations of pharmacy. They attached much value to Tolmens, or perforated stones, through which they made people creep for the cure of diseases. The use of this too simple remedy seems to have lingered among the Celts, both of Ireland and Wales, until very recent times. In Wales, indeed, a most superstitious custom is recorded by Pennant. "At Llandegla," he says, "sick people get under the communion table, lie down with a Bible under their heads, and remain there till break of day."

The serpent's egg (*anguinum*) was a substance to which these credulous philosophers attached great importance, while of simples proper we learn that vervain, selago, samolus, and last, though by no means least, the mistletoe, were in great request. This last being a plant of parasitic growth, and all diseases being, of necessity, abnormal to a robust frame, we may almost consider the Druids, in their application of *similia similibus*, anticipators of Hahnemann. As late even as 1695 we find a book, by one John Colebatch, published in London, lauding the medicinal properties of the mistletoe. The Gaels of Elgin and Murray, we read, still cut withies of the mistletoe and ivy, whereof they make circles, which they apply in some mysterious way for the relief of diseases. Tacitus tells us that the German dames competed with the priests in the science of physic, and that they were believed to be endued with divine wisdom.

Surgery (manual application) has been justly esteemed the earlier branch of the healing art. Its results, at least, were more open to criticism than the applications of medicine,

the miscarriage of which might be attributed to witchcraft, or natural retarding influences. Later in history, however, we learn of the skill of women, as well in medicine as in surgery. In "Palmerin of England" we read:—"The (wounded) knight of fortune departed with the gentleman his host to his house againe, whither being carefully brought in a chariot, such prouision was ordained for him, that by the helpe of the gentleman's daughter, who was marvailous expert in the art of medicine, his weake estate was relieued." (Chap. xxxvi.) Spenser, however, gives us a still more complete picture when he writes:—

"Meekely shee bowed downe, to weete if life  
Yett in his frosen members did remaine ;  
And, feeling by his pulses beating rife  
That the weake sowle her seat did yett retaine,  
Shee cast to comfort him with busy paine :  
His double-folded necke she reard upright,  
And rubd his temples and each trembling vaine ;  
His mayled haberieon she did undight,  
And from his head his heavy burganet did light.

"Into the woods thenceforth in haste shee went,  
To seeke for hearbes that mote him remedy ;  
For shee of herbes had great intendment,  
Taught of the nympe which from her infancy  
Had nourced her in trew nobility :  
There, whether yt divine tobacco were,  
Or panachæa, or polygony,  
She fownd, and brought it to her patient deare,  
Who al this while lay bleding out his hart-blood neare.

"The soveraine weede betwixt two marbles plaine  
Shee powdered small, and did in peeces bruze ;  
And then atweene her lilly handes twaine  
Into his wound the juice thereof did scruze ;  
And round about, as she could well it uze,  
The flesh therewith she suppld, and did steepe,  
T' abate all spasme and soke the swelling bruze ;  
And, after having searcht the intuse deepe,  
She with her scarf did bind the wound, from cold to keepe.

\* \* \* \* \*  
"Thether they brought that wounded Squyre, and layd  
In easie couch his feeble limbes to rest.  
He rested him awhile ; and then the Mayd  
His readie wound with better salves new drest :  
Daily she dressed him, and did the best,  
His grievous hurt to guarish, that she might ;  
That shortly she his dolour hath redrest,  
And his soule sore reduced to faire plight :  
It she reduced, but himselfe destroyed quight."

The Faërie Queene, b. iii., c. 5, sts. 31, 32, 33, and 41.

Sir Philip Sidney, in his "Arcadia," introduces "Gynecia having skill in surgery, an art in those days much esteemed, because it served to virtuous courage, which even ladies would, even with the contempt of cowards, seem to cherish."<sup>1</sup> The good knight, Aucassin, after his accident, must have had reason to be thankful that the fair Nicolette had not neglected this most important branch of her education:—

"So prosper'd the sweet lass, her strength alone  
Thrust deftly back the dislocated bone;  
Then culling various herbs of virtue tried,  
While her white smock the needful bands supplied,  
With many a coil the limb she swathed around,  
And nature's strength returned, nor knew the former wound."<sup>2</sup>

Women seem, indeed, to have enjoyed so admitted a pre-eminence as physicians in purely English times, that we are tempted to look on Americans as almost conservative in their efforts to re-vindicate woman's place among doctors. The practice of medicine and surgery, when first taken up by men, seems to have been confined to ecclesiastics and leeches. By the way, was it a subtle sarcasm from a woman's brain which led us to the right derivation of the latter word from the German *leich*, a corpse? These leeches are mentioned as driving a profession in the rudest ages:—

"Twig runes shalt thou ken,  
If thou a leech wilt be,  
And ken a sore to see;  
On bark shall one them write,  
And on branch of wood  
Whose limbs to east do lout."

Sigrdrifumal ii. in Sæmundar Edda.

"Knowledge comes, but wisdom lingers." The German-speaking peoples differed but little from their Celtic predecessors in their medical science. Charms, amulets, and incantations enter largely into the composition of mediæval specifics, the use of which Christianity failed to abolish; the "star-led wizards'" offering of gold, frankincense, and myrrh tending to throw the halo of religious antiquity over the superstitious application of many a product of nature. Essentially Gothic, however, is the following prescription,

<sup>1</sup> See also The Faërie Queene, b. ii., c. 11, st. 49; b. iv., c. 11, st. 6; and b. vi., c. 3, st. 10.

<sup>2</sup> See Mills's History of Chivalry, vol. i. p. 188.



a cure for *every sore* :—"Drink bull's dung in hot water; soon it healeth."

The study of botany seems to have made some progress in Anglo-Saxon times; and, indeed, the science is one to which the Scandinavian and Teutonic mind has at all times been much devoted. Witness the names of Linnæus and Goëthe. Witness the pleasant lines of that poet, Teutonic alike in name and character, Herbert :—

"Nothing hath got so far  
But man hath caught and kept it as his prey;  
His eyes dismount the highest star;  
He is in little all the sphere.  
Herbs gladly cure our flesh because that they  
Find their acquaintance there."

\* \* \* \* \*

"More servants wait on man  
Than he'll take notice of. In every path  
He treads down that which doth befriend him  
When sickness makes him pale and wan."

The homely names of these herbs have survived changes of dynasty, and modifications of religion and speech. To the Anglo-Saxon period belong the work of L. Appuleius, *De Herbarum virtutibus*, the treatise *De Betonicâ*, which has been ascribed to L. Appuleius and to Antonius Musa, and the work entitled *Medicina animalium*, ascribed to Sextus Philosophus. These have been since translated and printed.

Shakespeare, by an instinct happier than the laboured researches of archæologists, has reproduced the medical lore of these times in the speeches of the three witches in Macbeth, when selecting the ingredients for their charm. (Macbeth, act iv. sc. i.) With this description compare the following recipe for toothache, extracted from Marcellus, who lived about 380 A.D. :—"Say 'argidam, margidam, sturgidam,' or spit in a frog's mouth, and request him to make off with the toothache."

We need not, however, suppose that every practitioner who lived in these times was an implicit believer in the superstitious practices then in vogue. So strong was the general acceptance of magic influence, that every candidate for the confidence of the public must bow to the popular fashion; but, doubtless, many who knew how to avail themselves skilfully of such confidence,

secretly laughed at the arts which they employed to aid them in their cures.

The Catholic Church, unable to root out the superstitions, tried to fling a garb of religion around them. Thus, for instance, we find that exorcists were appointed to watch by the beds of women, in order to protect them from the advances of the demon Chemosh, who seems to have been credited with the paternity of every "foundling" of the day. It is not surprising that the demon should now and then succeed in eluding the vigilance of the exorcist, wearied with fasting and watching, but it is sad to find that he occasionally proved himself as malignant as he was lustful, by causing a child to be born with a strong resemblance to the enemy whom he had thus outwitted.

Amongst those whose names have been handed down as skilled in healing during Anglo-Saxon times, we may mention Alcuinus, an abbot of Canterbury, who in the year 790 settled at the court of Charles the Great, and became the founder of the University of Paris. His poems testify that he must have possessed considerable knowledge of the art of medicine. Take the following extract :—

"Accurrunt medici mox Hippocratica tecta,  
Hic fundit venas, herbas hic miscet in ollâ,  
Ille coquit pultes, alter sed pocula prefert."

Alcuin. Carm., p. 228.

At an earlier period than that of Alcuinus, we find frequent mention made of physicians in the writings of Bede; and amongst the letters of Boniface, somewhat later, is one from an Anglo-Saxon, asking for some books *de medicinalibus*. Anselm, the second Archbishop of Canterbury, enriched the abbey of Bec, which he had done so much to make famous, with many medical writings, whilst the skill of another Norman ecclesiastic, named John, is especially commended.

A few records remain which give us some insight into the surgical skill of this period. Thus we read of a skull fractured by a fall from a horse, which the surgeon closed and bound up; of a man whose legs and arms were broken by a fall, which the surgeons cured by tight ligatures; and of a diseased head, in the treatment of which the medical attendants were successful. In the case of a great swelling, with burning heat, in the neck, where the necklace came, it was laid open to let out the noxious matter.

This treatment gave the patient ease for two days, but on the third day the pains returned, and she died. In another case, a man had his knee swelled, and the muscles of his leg drawn up until it became a contracted limb. The surgeons exhausted their skill to no purpose, until an angel advised wheat flour to be boiled in milk, and the limb to be poulticed with it while warm. Frequent mention is made of the *œder-seax*, or vein-knife, but a general belief existed that venesection derived a mysterious efficacy from being performed at certain propitious times and seasons. It is still the custom with the rural population of some remote districts in England to be bled on May-day.

In the eleventh century sprang up the Knights of the Hospital, who accompanied the armies to battle as both soldiers and surgeons; and in the same century, also, was established the order of St. Lazarus, which was originally devoted to the care of lepers, but afterwards admitted non-infected persons as members, who also attended the armies, and gained a reputation as great warriors.

In these times the various monasteries were in the habit of preparing medicines, which they sold to the rich, and gave to the poor. To this custom may be traced the origin of our dispensaries.

A new era in the history of physic, in this country, dates from the introduction of the Arabian sciences into England. To the Arabians we are indebted for the first correct records of important diseases, and for the introduction of new and valuable remedies, vegetable and chemical; and we may almost say that they were the only nation in which medicine made any progress at all, from the seventh to the twelfth century.

About the end of the eleventh century we hear of Athelard of Bath as being distinguished for his Arabian studies. There is still extant a treatise written by him, in which, among other subjects, he treats on the nerves, the veins, and the virtues of herbs. At the close of the twelfth century we find, among the books of Benedict, the Abbot of Peterborough, an Arabian work on the virtues of plants entitled "*Almanazor*."

As we have before mentioned, the monks and clergy were the first regular medical practitioners in England. Thus, in the romance of "*Sir Guy*," we read that a monk healed the knight's wounds:—



"There was a monke beheld him well,  
That could of leach-crafte some dell."

Towards the end of the eleventh century, so lucrative had the practice of physic become, that many of the monks were induced to leave the monasteries for long periods, and to devote themselves exclusively thereto, to the neglect of their religious duties. During the early part of the twelfth century, many attempts were made to set bounds to, and to place some restraint upon this rapidly-increasing custom, and, at length, in the year 1163, it was enacted, by a decree of the Council of Tours, that none of the regular clergy should devote their time to physical compositions, and that all who were absent from their house for two months should be treated as excommunicated. From this time the clerical practitioners confined themselves almost exclusively to prescribing medicines, and the practice of surgery fell naturally into the hands of the barbers and smiths, who had been previously employed as assistants and dressers by the ecclesiastical operators.

A canon of the Council of Lateran, passed in 1123, throws a curious light upon the authority exercised at this time by the Church over the professors of the healing art. By this canon it was enacted that every physician, before prescribing for a sick man, should call in a spiritual adviser, or physician of the soul, and that no person who neglected to comply with this provision should be allowed to enter church until satisfaction had been made.

In this century, medicine seems to have been first studied as a science in England. In the year 1237, the college of Salerno, which had been founded at the beginning of the eleventh century, instituted a series of regulations to the effect that no one should practise physic who had not studied philosophy for three years, and physic for five years, and obtained the licence of the college, after undergoing an examination at the expiration of such period. Very similar regulations were shortly afterwards adopted in the English universities; and the standard of medical knowledge and education was thereby considerably raised, and a great impetus given to the pursuit. The degree of M.D. can be traced to the year 1384.

Subsequently to the Crusades (1096—1248), spices, gums, and other oriental substances were introduced into medicinal use, and



the grocers who supplied them thus became apothecaries. In the year 1231, there existed a fraternity of pepperers. It is worthy of remark, that all the early grocer-apothecaries to the Crown were foreigners. In Caxton we find a physician, spicer, and apothecary, all united in one profession.

The professors of the healing art are indebted for not a few useful discoveries to the much-ridiculed alchemists, who, in their vain search for the philosopher's stone, and the elixir of life, opened up new paths in chemical and medical knowledge. Raymond, Lully, and Paracelsus were all indefatigable in endeavouring to prepare one "universal medicine." Especially deserving of mention, however, is the name of Roger Bacon, the most philosophical of the alchemists, who was born in the year 1214, and has left behind him works describing the method of making tinctures and elixirs, and laying down rules for diet and medicines. Ricardus Anglicus and Bartholomeus tell us that, in the time of Bacon, gold was in great request as a most valuable medicine, and mention it as good for the leprosy, for fainting, and for the malady to which Englishmen, as viewed through French spectacles, are peculiarly liable—the spleen. So late as the year 1600, one Dr. Anthony reaped a large fortune by introducing, as a nostrum for the cure of every complaint, a liquor known as "aurum potabile."

One old superstition of Anglo-Norman and early English times may be here recorded. When a sick man hoped to be cured of his complaint through the intervention of some particular saint, it was the custom to bend one or more coins of gold or silver, in honour of such saint, in juxtaposition with the body of the patient, and it was deemed all the more satisfactory if the process of bending could be performed over the sick man's body, at the saint's shrine. On recovery, the coin was either presented to the church or shrine of the favouring saint, or retained by the person cured as a memorial. (*See "Annales Monasterii S. Albani," à Johanne Amundesham.*)

Midwives are mentioned as exercising their calling in these times; but they do not seem to have been held in any very great repute, or to have been possessed of much skill, nor does the occupation seem to have been by any means a lucrative one. Giraldus Cambrensis classes them and nurses with prostitutes. William of Malmesbury and Knighton reproach them with

binding up the breasts of women with a tight ligature, on account of an abundance of milk, and so occasioning death. Smyth mentions one as being fetched from Cheddar to London, and receiving 6s. 8d. on her departure.

In the courts of the princely rulers of Wales the fees of medical practitioners were fixed by law. A surgeon received as payment for curing a slight wound, the clothes of the injured person, which had been stained with his blood. For healing a dangerous wound, he had the bloody apparel, board and lodging while in attendance, and 180 pence.

Physicians in the thirteenth century are represented as wearing a very peculiar head-covering, the top being like a Phrygian bonnet, and the bottom shaped like a leaf. It was their custom to visit patients attended by servants, who carried their swords.

A most complete description of the physician of the fourteenth century, and of the state of medical knowledge in England at that time, has been preserved to us by Chaucer, in the character of the "Doctour of Phisike," as given in the prologue to the "Canterbury Tales:"—

"With us ther was a Doctour of Phisike,  
In all this world ne was ther non him like  
To speke of phisike, and of surgerie :  
For he was grounded in astronomie.  
He kept his patient a ful gret del  
In houres by his magike naturel.  
Wel coude he fortunen the ascendent  
Of his images for his patient.

"He knew the cause of every maladie,  
Were it of cold, or hote, or moist, or drie,  
And wher engendred, and of what humour,  
He was a veray parfite practisour.  
The cause yknowe, and of his harm the rote,  
Anon he gave to the sike man his bote.  
Ful redy hadde he his apothecaries  
To send him dragges, and his lettuaries,  
For eche of hem made other for to winne :  
His frendship n'as not newe to beginne.  
Wel knew he the old Esculapius,  
And Dioscorides, and eke Rufus ;  
Old Hippocras, Hali, and Gallien ;  
Serapion, Rasis, and Avicen ;  
Averrois, Damascene, and Constantin,  
Bernard, and Gatisden, and Gilbertin.

Of his diete mesurable was he,  
 For it was of no superfluitee,  
 But of gret nourishing, and digestible.  
 His studie was but litel on the Bible.  
 In sanguin and in perse he clad was alle  
 Lined with taffata, and with sendalle.  
 And yet he was but esy of dispence :  
 He kepte that he wan in the pestilence.  
 For gold in phisike is a cordial ;  
 Therfore he loved gold in special."

We are told that the surgeons of this period adopted, from the French, a custom of requiring security from their patients for payment when the cure was effected.

The science of anatomy made but slow progress in early English times. The dissection of the human body was first publicly practised in the year 1315 by Mondini, at Bologna; but it was not till the close of the fifteenth century that human bodies were substituted for those of animals in the dissecting rooms of this country. The first anatomical work written in English was published by Thomas Vicary, in the year 1548, under the title of "A Treasure for Englishmen, containing the Anatomie of Man's Body."

The medical history of this period would be incomplete without some mention of the names of Gilbertus Anglicus, the first English surgeon whose name has been handed down to us, and author of the first extant treatise on the practice of medicine in England, who flourished at the end of the thirteenth century; of John of Gaddesden, a prebend of St. Paul's, the first English physician employed at Court, and author of the celebrated "Medical Rose," a work embracing the whole practice of medicine, who lived about the beginning of the fourteenth century; and of Thomas Linacre, the founder and first president of the College of Physicians, who was born towards the close of the same century.

The period of modern British medicine may be said to date from the beginning of the sixteenth century. At this time, a more scientific study of medicine had its rise, chemical medicines were first regularly employed, and efforts were for the first time made by the legislature to regulate the practice of the medical profession. We must not, however, suppose that the old superstitious practices, which had been so long associated with the pursuit of the healing art, were altogether cast aside. Alchemists, astrologers,



and physicians, in the estimation of the good folks of the time prior, and, indeed, subsequent to Harvey, must have appeared almost convertible terms. Even at the present date the almanac of "Francis Moore, physician," competes with that of the distinguished Zadkiel. It must be admitted, however, that the simple hieroglyphic of the older author is scarcely so attractive as the terrific denunciations of the more modern soothsayer. The character of Lilly, *facile princeps* of this class of traders on the public credulity, is delineated with such delicious quaintness in "Hudibras," that we cannot forbear from transcribing Ralph's tribute to his merits:—

"Quoth Ralph,—Not far from hence doth dwell,  
A cunning man, hight Sidrophel,  
That deals in destiny's dark counsels,  
And sage opinions of the moon sells;  
To whom all people, far and near,  
On deep importances repair;  
When brass and pewter hap to stray,  
And linen slinks out of the way;  
When geese and pullen are seduc'd,  
And sows of sucking pigs are chous'd;  
When cattle feel indisposition,  
And need th' opinion of physician;  
When murrain reigns in hogs or sheep,  
And chickens languish of the pip;  
When yeast and outward means do fail,  
And have no pow'r to work on ale;  
When butter does refuse to come,  
And love proves cross and humoursome;  
To him with questions, and with urine,  
They for discov'ry flock, or curing."

At a time when such Galens as Sidrophel took in hand the healing of the physical maladies of men, we can scarcely wonder at the frequent mention in the pages of Clarendon, after the announcement of the infliction of a wound on any combatant, of the brief but sad finale, "whereof he died;" and we find small cause for surprise at the happy fate of the good soldier, who, being left all night *unattended*, after the combat of Edgehill, "lived to fight another day." The ill-fated Charles I., better skilled in all things than in reading the signs of the times, displayed sound common sense, as well as magnanimity, in proffering to the wounded Hampden the services of his own physician.

The name of royalty brings us easily to the good old custom



of touching for the evil (scrofula), which, originating with Edward the Confessor, was continued so late as the reign of Queen Anne, who, we read, was induced to lay her hands upon Samuel Johnson. The superstition had, however, received its death-blow from King William III., who, it may be, distrusting his own divine right, consistently refused to play the sorcerer's part. Once, and only once, did he yield to importunity. "God give you better health, and more sense," said he, as he laid his hand on the sufferer.

In earlier times, we find that the Roman Catholic kings of England used, on Good Friday in each year, to bestow their benediction upon certain rings, which were afterwards treasured as specifics for cramp.

An amusing anecdote relative to the old belief in witchcraft—a belief which can hardly be said to have entirely died out, even at the present day—is given in the preface to a book written by W. Clowes, an eminent surgeon, at the end of the sixteenth century. He tells us of an old woman living in his day, who professed to be able to cure all diseases by a potent charm, which she was ready to work in favour of all who could afford to pay the fee of a penny, and a loaf of bread. She was committed for sorcery, but her judges, being humane and sensible men, promised to discharge her if she would disclose the secret of her wonderful charm. Thereupon, she confessed that it consisted in uttering the following mystic words over the sick person:—

" My loaf in my lap,  
My penny in my purse,  
Thou art never the better,  
Nor I am never the worse."

One relic of old superstition still lingers amongst us, unsuspected by many. The R, which doctors in the present day attach to their prescriptions, and which is generally supposed to be an abbreviation of the word *recipe*, is the old astrological sign of Jupiter. So, the canes, which were carried by physicians in comparatively recent times, were nothing but the old wizards' wands, in a new form.

A statute passed in the year 1542 (33 Henry VIII. c. 12) shows us very clearly the barbarous state of surgical practice at that period. The statute, after enacting that every person striking, and thereby shedding blood in the king's palace or house, shall have his hand stricken off, orders that there shall be present at the

execution, among others, the chief surgeon for the time being, to sear the stump; the serjeant of the pantry, to give bread to the person whose hand has been stricken off; the serjeant of the cellar, to give to the same a draught of red wine after the searing; the serjeant of the ewry, and the yeoman of the chandry, with cloths, and seared cloths, respectively, for the surgeon; the serjeant of the poultry, with a cock ready for the surgeon to wrap about the bleeding stump; the yeoman of the scullery, to prepare a fire, and make ready searing irons; the chief ferror, to bring with him searing irons, and deliver them, when hot, to the surgeon; and the groom of the salcery, with vinegar and cold water, to give attendance upon the surgeon.

The medical profession seems to have been hardly so lucrative in the seventeenth century as at the present day, if we may judge by the records which we have of the fees usually paid at that time. Thus, in 1618, we find 2s. sent, with the urine, to an eminent physician; but, in another case, 6d. seems to have been considered sufficient. In 1700, the dues of graduates in physic amounted to 10s., but we hear that they expected 20s. The fee of a licensed physician was 6s. 8d., and of a surgeon 1s. per mile. The charge for bleeding was 1s., for setting a bone, broken or dislocated, 10 groats, and for amputation £5. (See the "*Levamen Infirmi*." ) In the time of Charles I., physicians used to visit their patients, on horseback, sitting sideways.

The progress of medical knowledge in this country during the seventeenth century has been ably described by Lord Macaulay in his history of England (vol. i. pp. 310, 411). "Medicine," he says, "which, in France, was still in abject bondage, and afforded an inexhaustible subject of just ridicule to Molière, had in England become an experimental and progressive science, and every day made some new advance, in defiance of Hippocrates and Galen. The attention of speculative men had been, for the first time, directed to the important subject of sanitary police. To that period belong the chemical discoveries of Boyle, and the first botanical researches of Sloane. One after another, phantoms which had haunted the world through ages of darkness fled before the light. Astrology and alchemy became jests. Soon there was scarcely a county in which some of the quorum did not smile contemptuously when an old woman was brought before them for riding on broomsticks, or giving cattle the murrain."

So early as the year 1422, a bill was brought in to restrain women, and all persons who had not taken the M.B. degree at Oxford or Cambridge, from practising physic; but it seems to have been referred to the Privy Council, and never to have become law. (Petyt MSS. v. 33.) In 1511 was passed the first statute for regulating the medical profession.<sup>1</sup> If we may believe the preamble to this act, physic and surgery were then practised by "ignorant persons, who could no letters on the book, and by common artificers, smiths, weavers, and women, who took upon themselves great cures, partly using sorcery and witchcraft, partly applying very noxious medicines to the disease." The profession was now for the first time divided into physicians, surgeons, and apothecaries. The various statutes which have been passed since that date for regulating the practice of medicine and surgery in England, and the effects produced thereby, are fully treated of in the body of the present work, under their appropriate heads.

At the present day, we may be said to be without any general medical theory, medicine having acquired with us more and more nearly the character of a science of simple observation, and patient investigation of facts.

It would be interesting to deduce the progress of the science of medicine from the career of the first investigator of the course of nature, down to those men of renown, who, in our own time, have vindicated the honour ascribed by the son of Sirach to the physician. Wisdom is justified of all her children. No man by searching can find out God, or drag to light all the hidden workings of His handiwork, "Nature." In every age, each Numa may discover his Egeria, and the student of history will find in the advancement of medical science fresh evidence of the truth of the poet's words:—

"— I doubt not thro' the ages one increasing purpose runs,  
And the thoughts of men are widen'd with the process of the suns."

<sup>1</sup> 3 Hen. VIII. c. 11.

## CHAPTER II.

### REGISTRATION OF MEDICAL MEN.<sup>1</sup>

#### I. *The General Council.*

1. "The General Council of Medical Education and Registration of the United Kingdom," was first constituted by the Medical Act, 1858,<sup>2</sup> and was, in the year 1862, incorporated by Act of Parliament,<sup>3</sup> with a perpetual succession, a common seal, and a capacity to hold lands, for the purposes of the Medical Act.

2. Out of the General Council are formed branch councils for England, Scotland, and Ireland.<sup>4</sup>

3. The General Council consists of twenty-four members, chosen and nominated for a term not exceeding five years, in the following manner.

*a.* One person chosen from time to time by each of the following bodies, viz.:—The Royal College of Physicians of London; the Royal College of Surgeons of England; the Apothecaries' Society of London; the University of Oxford; the University of Cambridge; the University of Durham; the University of London; the College of Physicians of Edinburgh; the College of Surgeons of Edinburgh; the Faculty of Physicians and Surgeons of Glasgow; the King and Queen's College of Physicians in Ireland; the Royal College of Surgeons in Ireland; the Apothecaries' Hall of Ireland; the University of Dublin; and the Queen's University in Ireland.

*b.* One person chosen from time to time by the University

<sup>1</sup> This system of registration was established, as stated in the preamble to the Medical Act, "to enable persons requiring medical aid to distinguish qualified from unqualified practitioners." For the disabilities imposed by the Act upon unregistered persons, see *post*, c. vi. sec. 4.

<sup>2</sup> 21 & 22 Vict. c. 90.

<sup>3</sup> 25 & 26 Vict. c. 91.

<sup>4</sup> 21 & 22 Vict. c. 90, s. 3.



of Edinburgh, and the two Universities of Aberdeen, collectively.

c. One person chosen from time to time by the University of Glasgow, and the University of St. Andrew's, collectively.

d. Six persons nominated by her Majesty, with the advice of her Privy Council, four of whom are appointed for England, one for Scotland, and one for Ireland.

e. A President, elected by the General Council.<sup>1</sup>

4. If the Universities of Edinburgh, and Aberdeen, and of Glasgow, and St. Andrew's, respectively, are, at any time, unable to agree upon some one person to represent them in the council, each University may select one person, and her Majesty will, with the advice of her Privy Council, appoint one of the persons so selected.<sup>2</sup>

5. In the University of London, the authority to choose a representative at the Council is vested in the senate, consisting of the Chancellor, Vice-Chancellor, and Fellows for the time being, and not in the whole body of graduates of the University.<sup>3</sup>

6. Members representing the medical corporations must be qualified to be registered under the Medical Act.<sup>4</sup>

7. Members are capable of re-appointment.<sup>5</sup>

8. A member may, at any time, resign his appointment, by letter, addressed to the President of the Council.<sup>6</sup>

9. The Branch Councils for England, Scotland, and Ireland are constituted in the following manner. The members chosen by the Medical Corporations and Universities of England, Scotland, and Ireland, respectively, and the members nominated by her Majesty, with the advice of her Privy Council, for such parts, respectively, of the United Kingdom, form the Branch Councils for such parts, respectively, of the United Kingdom. The president is a member of all the branch councils.<sup>7</sup>

## II. *Meetings of the General Council.*

1. The President, or any eight members of the Council, may summon a meeting of the General Council at any time, by letter addressed to each member.<sup>8</sup>

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 4, 8.

<sup>2</sup> *Ib.* s. 5.

<sup>3</sup> *R. v. Storrar*, 28 L. J. Q. B. 326.

<sup>4</sup> 21 & 22 Vict. c. 90, s. 7.

<sup>5</sup> *Ib.* s. 8.

<sup>6</sup> *Ib.* s. 8.

<sup>7</sup> *Ib.* s. 6.

<sup>8</sup> *Ib.* s. 9; Minutes of the General Council, vol. i. p. 21.

2. In the absence of the President, the members present may choose one of their number to act as president.<sup>1</sup>

3. All acts of the General Council are decided by the votes of the majority of members present, eight being a quorum. The president for the time being has a casting vote.<sup>2</sup>

4. A fee of £5 5s. per day is allowed for attendance on the General Council, together with reasonable travelling and hotel expenses, to each member attending.<sup>3</sup>

5. The expenses of the General Council, including those of keeping, printing, and publishing the register for the United Kingdom, are defrayed by means of an equal percentage rate upon all moneys received by the several branch councils.<sup>4</sup>

### III. *The Executive Committee.*<sup>5</sup>

1. The Executive Committee is elected by ballot, and consists of six members, exclusive of the president, who is an *ex officio* member.

2. Four of the members elected are chosen from the English, one from the Scottish, and one from the Irish branch council.

3. It is the duty of the executive committee to make up the annual accounts, and compute the percentage chargeable against each branch council; to superintend the publication of the register; and to appoint a temporary substitute for the registrar, if necessary, when the general council is not in session.

4. A fee of £2 2s. per day is allowed for attendance on the Executive Committee, together with reasonable travelling expenses, to each member attending.<sup>6</sup>

### IV. *The Registrars, and their duties.*<sup>7</sup>

1. A General Registrar is appointed by the General Council, who also acts as registrar for the branch council for England, and each of the branch councils for Scotland and Ireland likewise appoints a registrar.<sup>8</sup>

<sup>1</sup> 21 & 22 Vict. c. 90, s. 9.

<sup>2</sup> *Ib.* s. 9.

<sup>3</sup> See *Ib.* s. 12; Minutes of the General Council, vol. i. p. 29.

<sup>4</sup> 21 & 22 Vict. c. 90, s. 13.

<sup>5</sup> See *Ib.* s. 9, and Minutes of the General Council, vol. iii. p. 19; vol. iv. p. 302; and vol. i. pp. 21, 71, 72, and 151.

<sup>6</sup> 21 & 22 Vict. c. 90, s. 12; Minutes of the General Council, vol. i. p. 29.

<sup>7</sup> As to power of removing names from the register for certain offences, see *post*, c. vii., sec. 3, § I.

<sup>8</sup> 21 & 22 Vict. c. 90, ss. 10, 11.

2. It is the duty of the General Registrar to keep a general register; and of each of the branch registrars, to keep a local register, in the following form, or to the like effect.<sup>1</sup>

NAME.	RESIDENCE.	QUALIFICATION.
A. B.	London.	Fellow of the Royal College of Physicians of —.
C. D.	Edinburgh.	Fellow and Member of the Royal College of Surgeons of —.
E. F.	Dublin.	Graduate in Medicine of University of —.
G. H.	Bristol.	Licentiate of the Society of Apothecaries.
I. K.	London.	Member of College of Surgeons, and Licentiate of the Society of Apothecaries.

3. Where any person entitled to be registered applies to the registrar of any of the branch councils for that purpose, such registrar must, forthwith, enter in his local register the name and place of residence, and the qualification or several qualifications in respect of which the person is so entitled, and the date of the registration; and, in the case of a registrar of the branch council for Scotland or Ireland, he must, also, with all convenient speed, send to the registrar of the General Council a copy, certified under his hand, of the entry so made.<sup>2</sup>

4. The General Registrar must enter in his general register all the entries made in the local registers for Scotland and Ireland, so forwarded to him, and, also, all the entries which he has made in the local register for England, and such entries in the general register must bear date from the local register.<sup>3</sup>

5. The General Registrar must also, in every year, cause to be printed, published, and sold, under the direction of the General Council, a correct register of the names, in alphabetical order, according to the surnames, with the respective residences, and medical titles, diplomas, and qualifications conferred by any corporation or university, or by doctorate of the Archbishop of Canterbury, with the dates thereof, of all persons appearing on the general register, as existing on the first day of January, in every year.<sup>4</sup>

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 14 and 25, and Sch. (D); 22 Vict. c. 21, s. 3.

<sup>2</sup> 21 & 22 Vict. c. 90, s. 25.

<sup>3</sup> *Ib.* s. 25.

<sup>4</sup> *Ib.* s. 27.



6. Such register must be published in the form above given for the local and general registers, and must be called "The Medical Register."<sup>1</sup>

7. The registrars must keep their registers correct, and erase the names of all registered persons who have died, and, from time to time, make the necessary alterations in the addresses or qualifications of registered persons.<sup>2</sup>

8. A registrar may, at any time, write a letter to any registered person, addressed to him according to his address on the register, to inquire whether he has ceased to practise, or has changed his residence; and, if he receive no answer to such letter within the period of six months, he may erase the name of such person from the register. Such name may, however, be restored, by an order of the General Council.<sup>3</sup>

9. It is the duty of every registrar of deaths in the United Kingdom, on receiving notice of the death of any medical practitioner, to transmit by post, forthwith, to the General Registrar, and to the registrar of the branch council where such death took place, a certificate, under his own hand, of such death, with the particulars of time and place of death; and a registrar who receives such a certificate must erase the name of such deceased medical practitioner from the register.<sup>4</sup>

10. Any registrar who wilfully makes, or causes to be made, any falsification in any matters relating to the register may, on conviction, be imprisoned for any term not exceeding twelve months.<sup>5</sup>

#### V. *Who are entitled to be Registered.*

1. Every person possessing one or more of the following qualifications is entitled, on payment of a fee of £2 in respect of qualifications obtained before January 1st, 1859, and of £5 in respect of qualifications obtained since that date, to be registered, on producing to the registrar of the branch council for England, Scotland, or Ireland, the document conferring or evidencing the qualification, or each of the qualifications, in respect whereof he seeks to be registered; or upon transmitting by post to such registrar information of his name and address, and evidence of

<sup>1</sup> 21 & 22 Vict. c. 90, s. 27; Minutes of the General Council, vol. i. p. 19.

<sup>2</sup> *Ib.* s. 14.

<sup>3</sup> *Ib.* s. 14.

<sup>4</sup> *Ib.* s. 45.

<sup>5</sup> *Ib.* s. 38.



the qualification or qualifications in respect whereof he seeks to be registered, and of the time or times at which the same was or were, respectively, obtained :<sup>1</sup>—

*a.* Fellow, Member,<sup>2</sup> Licentiate, or Extra-Licentiate of the Royal College of Physicians of London.

*b.* Fellow, Member,<sup>3</sup> or Licentiate of the Royal College of Physicians of Edinburgh.

*c.* Fellow, or Licentiate of the King and Queen's College of Physicians of Ireland.

*d.* Fellow, or Member, or Licentiate in Midwifery, of the Royal College of Surgeons of England.

*e.* Fellow, or Licentiate of the Royal College of Surgeons of Edinburgh.

*f.* Fellow, or Licentiate of the Faculty of Physicians and Surgeons of Glasgow.

*g.* Fellow, or Licentiate of the Royal College of Surgeons in Ireland.

*h.* Licentiate of the Society of Apothecaries, London.

*i.* Licentiate of the Apothecaries' Hall, Dublin.

*j.* Doctor, or Bachelor, or Licentiate of Medicine, of any University of the United Kingdom.

*k.* Licentiate in Surgery of any University in Ireland, legally authorized to grant a licence in surgery.<sup>4</sup>

*l.* Doctor of Medicine, by doctorate granted prior to 2nd of August, 1858, by the Archbishop of Canterbury.

*m.* Doctor of Medicine of any foreign, or colonial university or college, practising as a physician in the United Kingdom before October 1st, 1858, who produces certificates, to the satisfaction of the Council, of his having taken such degree after regular examination, or who satisfies the Council that there is sufficient reason for admitting him to be registered.

2. The above-mentioned colleges and other bodies may transmit, from time to time, to the registrar of the branch council for England, Scotland, or Ireland, lists, certified under their respective seals, of the several persons who, in respect of qualifications granted by such colleges and bodies respectively, are, for the time being, entitled to be registered, stating the respective quali-

<sup>1</sup> 21 & 22 Vict. c. 90, s. 15, and Sch. (A); Minutes of the General Council, vol. i. p. 7.

<sup>2</sup> 22 Vict. c. 21, s. 4.

<sup>3</sup> *Ib.* s. 4.

<sup>4</sup> 23 Vict. c. 7, s. 1.

fications, and places of residence of such persons; and thereupon, and upon payment of the proper fee, such registrar will enter in the register the persons mentioned in such lists, with their qualifications and places of residence, without other application in relation thereto.<sup>1</sup>

3. Persons who were actually practising medicine in England before August 1st, 1815, are entitled to be registered upon payment of a fee of £2, and upon producing to the registrar of the branch council for England, Scotland, or Ireland, or upon transmitting to him by post, together with information of his name and address, the following declaration, duly signed:—

*To the Registrar of the Medical Council.*

I, \_\_\_\_\_, residing at \_\_\_\_\_, in the county of \_\_\_\_\_, hereby declare that I was practising as a medical practitioner, at \_\_\_\_\_, in the county of \_\_\_\_\_, before the first day of August, 1815.

(Signed.) [ Name. ]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.<sup>2</sup>

4. Persons who, on or before October 1st, 1858, held appointments as surgeons or assistant-surgeons in the Army, Navy, or Militia, or in the service of the East India Company, or who were acting, on or before that date, as surgeons in the public service, or in the service of any charitable institution, are entitled to be registered, on the production of evidence, satisfactory to the branch council to which application may be made, that there is sufficient ground for directing such registration to be made.<sup>3</sup>

5. Persons who were practising medicine or surgery within the United Kingdom, on foreign or colonial diplomas or degrees, before 2nd August, 1858, are entitled to be registered, if they obtained such diplomas or degrees after regular examination at the seat of the university or college which granted the same.<sup>4</sup>

6. Any registered person who obtains any higher degree, or any of the qualifications mentioned above (sec. 1), other than the

<sup>1</sup> 21 & 22 Vict. c. 90, s. 15.

<sup>2</sup> *Ib.* s. 17, and Sch. (B); Minutes of the General Council, vol. i. p. 7.

<sup>3</sup> *Ib.* s. 46; Minutes of the General Council, vol. i. p. 26.

<sup>4</sup> *Ib.* s. 46; Minutes of the General Council, vol. i. pp. 25, 26, and 34.

qualification in respect of which he was registered, is entitled to have such higher degree or additional qualification inserted in the register, in substitution of, or in addition to the qualification previously registered, on payment of a fee of 5s.<sup>1</sup>

7. Any person claiming to be entitled to be registered on account of any qualification, or to be entitled to have any additional qualification added to his name, after the first registration, is bound to satisfy the registrar, by proper evidence, that he is entitled to such qualification.<sup>2</sup>

8. Any appeal from the decision of the registrar may be decided by the General Council, or by the Council for England, Scotland, or Ireland (as the case may be); and any entry which may be proved, to the satisfaction of such General Council, or branch council, to have been fraudulently or incorrectly made, may be erased from the register, by order in writing of such General Council, or branch council.<sup>3</sup>

9. When the registrar of a branch council inserts in, and afterwards, by order of such branch council, and without notice to the party registered, strikes out of the register the description of a qualification which the evidence produced to the registrar by the claimant did not show that he had obtained, the court will not, by *Mandamus*, compel the registrar to re-insert such description.<sup>4</sup>

10. Any person wilfully procuring, or attempting to procure himself to be registered, by making or producing, or causing to be made or produced, any false or fraudulent representation or declaration, either verbally or in writing, and any person aiding and assisting him therein, is liable, on conviction, to be sentenced to be imprisoned for any term not exceeding twelve months.<sup>5</sup>

## VI. *Registration of Colonial Practitioners.*

1. Every colonial legislature has full power, from time to time, to make laws for the purpose of enforcing the registration, within its jurisdiction, of medical practitioners, including persons who have been registered under the "Medical Act;" but any person who has been duly registered under that Act is entitled to be

<sup>1</sup> 21 & 22 Vict. c. 90, s. 30; Minutes of the General Council, vol. i. pp. 7 and 21.

<sup>2</sup> *Ib.* s. 26.

<sup>3</sup> *Ib.* s. 26.

<sup>4</sup> *R. v. Steele*, 13 Ir. Com. L. Rep., N. S., 398.

<sup>5</sup> 21 & 22 Vict. c. 90, s. 39.



registered in any colony, upon payment of the fees (if any) required for such registration, and upon proof, in such manner as the colonial legislature may direct, of his registration under the said Act.<sup>1</sup>

2. This does not apply to the Channel Islands, or the Isle of Man.<sup>2</sup>

VII. *Powers of the General Council over the Licensing and Qualifying Bodies.*

1. The several colleges and bodies authorized to grant the qualifications which entitle the holders thereof to be registered, are bound, from time to time, when required by the General Council, to furnish such Council with such information as they may require, as to the courses of study and examinations to be gone through to obtain the respective qualifications, and the ages at which such courses of study and examination are required to be gone through, and such qualifications are conferred, and, generally, as to the requisites for obtaining such qualifications.<sup>3</sup>

2. Any member or members of the General Council, or any person or persons deputed for the purpose by such Council, or by any branch council, may attend and be present at any such examinations.<sup>4</sup>

3. Whenever it may appear to the General Council that the course of study and examinations to be gone through, in order to obtain any such qualification from any such college or body, are not such as to secure the possession by persons obtaining such qualification of the requisite knowledge and skill for the efficient practice of their profession, the General Council may represent the same to the Privy Council.<sup>5</sup>

4. The Privy Council may, upon any such representation, if it see fit, order that any qualification granted by such college or body, after such time as may be mentioned in the order, shall not confer any right to be registered.<sup>6</sup>

5. Her Majesty may, however, with the advice of her Privy Council, when it is made to appear to her, upon further representation from the General Council, or otherwise, that such college or body has made effectual provision, to the satisfaction of the General Council, for the improvement of such course of study

<sup>1</sup> 31 Vict. c. 29, s. 3.

<sup>4</sup> *Ib.*

<sup>2</sup> *Ib.* s. 2.

<sup>5</sup> *Ib.* s. 20.

<sup>3</sup> 21 and 22 Vict. c. 90, s. 18.

<sup>6</sup> *Ib.* s. 21.



or examinations, or the mode of conducting such examinations, revoke any such order.<sup>1</sup>

6. After the time mentioned in any such order in Council, no person is entitled to be registered in respect of any such qualification, as in such order mentioned, granted by the college or body to which such order relates, after the time therein mentioned; and the revocation of any such order does not entitle any person to be registered in respect of any qualification granted before such revocation.<sup>2</sup>

7. Whenever it may appear to the General Council that an attempt has been made by any body entitled to grant qualifications to impose upon any candidate offering himself for examination an obligation to adopt, or refrain from adopting, the practice of any particular theory of medicine or surgery, as a test or condition of admitting him to examination, or of granting a certificate, the General Council may represent the same to the Privy Council.<sup>3</sup>

8. The Privy Council may, upon any such representation, issue an injunction to such body so acting, directing them to desist from such practice, and, in the event of their not complying therewith, order that such body shall cease to have the power of conferring any right to be registered, so long as they shall continue such practice.<sup>4</sup>

9. All the above-mentioned powers of the Privy Council may be exercised by any three or more of the Lords and others of the Privy Council, the Vice-President of the Committee of the Privy Council on Education being one of them; and all the above-mentioned orders and acts of the Privy Council are deemed sufficiently made and signified by a written or printed document, signed by one of the clerks of the Privy Council, or such officer as may be appointed by the Privy Council in such behalf; and all orders and acts made or signified by any written or printed document purporting to be so signed, are deemed to have been duly made, issued, and done by the Privy Council; and every such document is evidence in all courts, and before all justices and others, without proof of the authority or signature of such clerk, or other officer, or other proof whatsoever, until it is shown that such document was not duly signed by the authority of the Privy Council.<sup>5</sup>

<sup>1</sup> 21 and 22 Vict. c. 90, s. 21.    <sup>2</sup> *Ib.* s. 22.    <sup>3</sup> *Ib.* s. 23.    <sup>4</sup> *Ib.*    <sup>5</sup> *Ib.* s. 24.

### VIII. *The British Pharmacopœia.*

1. By s. 54 of the Medical Act, it was enacted that the General Council should cause to be published, under their direction, a book containing a list of medicines and compounds, and the manner of preparing them, together with the true weights and measures by which they must be prepared and mixed, and containing such other matter and things relating thereto as the General Council should think fit, to be called "*British Pharmacopœia*;" and power was given to the General Council to cause to be altered, amended, and republished such Pharmacopœia, as often as they should deem it necessary.

2. The exclusive right of publishing, printing, and selling the "*British Pharmacopœia*" is vested in the General Council, subject to the proviso that the Commissioners of the Treasury may, from time to time, fix the price at which copies of the said work are to be sold to the public.<sup>1</sup>

3. The "*British Pharmacopœia*" has been, for all purposes, substituted, throughout Great Britain and Ireland, for the Pharmacopœias formerly published under the direction of the Royal College of Physicians of London, the Royal College of Physicians of Edinburgh, and the King and Queen's College of Physicians in Ireland; and all Acts of Parliament, Orders in Council, or customs relating to such last-mentioned Pharmacopœias, are now deemed to refer to the "*British Pharmacopœia*."<sup>2</sup>

4. A copy of the "*British Pharmacopœia*," printed by such person as may be named from time to time by notice in the *London*, *Edinburgh*, and *Dublin Gazettes*, as authorized by the General Council to print the said Pharmacopœia, is admissible in evidence, as being the Pharmacopœia directed to be published by the Medical Act.<sup>3</sup>

5. Any person compounding any medicines of the "*British Pharmacopœia*," except according to the formularies of the said Pharmacopœia, is liable to a penalty of £5 for every such offence, which may be recovered by the Registrar of the Pharmaceutical Society of Great Britain, in the name, and by the authority of the Council of the said Society.<sup>4</sup>

<sup>1</sup> 25 and 26 Vict. c. 91, s. 2.

<sup>2</sup> *Ib.* s. 3.

<sup>3</sup> *Ib.*

<sup>4</sup> 31 and 32 Vict. c. 121, s. 15; 15 and 16 Vict. c. 56, s. 12.

## CHAPTER III.

### THE LICENSING AND QUALIFYING BODIES.

#### PART I.—MEDICAL AND SURGICAL CORPORATE BODIES.

##### *Sec. I.—The Royal College of Physicians of London.*

##### *I. History of the College.*

The Royal College of Physicians of London was founded in the year 1518, by letters patent, granted by King Henry VIII., which were obtained through the instrumentality of Thomas Linacre, by his interest with Cardinal Wolsey. The charter, after expressing the hope of the king that those men who profess physic rather from avarice than in good faith, to the damage of credulous people, may be checked, and that ignorant and rash practitioners may be restrained and punished, proceeds to incorporate John Chambre, Thomas Linacre, Ferdinand de Victoria, Nicholas Halsewell, John Francis, and Robert Yaxley, and all men of the same faculty of and in the City of London, as a perpetual community or college, with power to choose each year a president, to make by-laws and regulations for the government of the college, and of all men of the faculty of physic in London and within seven miles thereof, and to elect annually four censors, to have correction of physicians within such limits, and of their medicines, and to punish by fine and imprisonment.<sup>1</sup> It was further provided that no one should exercise the faculty of physic within such limits, without a licence from the college, under a penalty of £5 per month.

In the year 1522, this charter was confirmed in the most ample manner,<sup>2</sup> and power was given to the college to choose eight elects,

<sup>1</sup> See Dr. Alphonso and the Colledge of Physitians 2 Buls. 259; Dr. Greonvelt's case, 1 Ld. Ray. 213.

<sup>2</sup> By 14 and 15 Henry VIII. c. 5.



from whom, also, the president was to be taken each year. It was also enacted that no persons, except graduates of Oxford and Cambridge, should practise physic through England, until they had been examined, at London, by the president and three of the elects, and received from them letters testimonial.

In the year 1540, power was given to the college<sup>1</sup> to choose annually four of their fellows, to have authority, together with the Warden of the Apothecaries' Society, to enter the houses of apothecaries in the City of London, to examine their wares, drugs, and stuff, and to burn or destroy those that were defective.<sup>2</sup> It was also provided that every apothecary resisting should forfeit £5. By the same Act, surgery was declared a part of physic, and the practice thereof was thrown open to all of the company or fellowship of physicians throughout the realm.

In the year 1553, the statute 14 and 15 Henry VIII. c. 5, was confirmed,<sup>3</sup> and it was enacted that when the president or censors should commit to prison any offender or transgressor in the faculty of physic within London and the precincts thereof, the gaoler should receive such person, so offending, and keep him safely, at the prisoner's charge, until discharged by the president and censors, under penalty of double the fine imposed on such offender, so that the said fine should not at any time exceed £20. It was also provided that the Wardens of the Grocers, or one of them, might accompany the persons chosen by the college to search and view poticary wares, drugs, and compositions, and that on their refusal to attend, or delay in coming, the physicians might act without them. A penalty of £10 was, moreover, imposed upon all persons resisting such search, and the magistrates of the City were required to aid and assist, when requested.

In the year 1814, power was given to the college to hold corporate meetings in the City of Westminster, and to hold lands to the yearly value of £1,000.<sup>4</sup>

By the Medical Act, as amended by 22 Vict. c. 21, the practice of physic throughout her Majesty's dominions was thrown open to all fellows, members, licentiates, and extra licentiates of the college, if duly registered. Hence the main function of the

<sup>1</sup> By 32 Henry VIII. c. 40.

<sup>2</sup> It has been usual to select for this office the same four persons as have been chosen censors.

<sup>3</sup> By 1 Mar. sess. 2, c. 9.

<sup>4</sup> By 54 Geo. III. c. 118.



elects, viz., granting testimonials to country practitioners, was virtually superseded, and in the year 1860, the office and name of elects were abolished.<sup>1</sup> Up to the year 1836, the college consisted of fellows, candidates, licentiates, and extra-urbem licentiates. The order of candidates consisted of those persons who were desirous of becoming fellows of the college, and who had been examined and approved of by the president and censors of the college to be candidates for election into the society of fellows. The admission into this class, however, amounted merely to a declaration of present intention, and created no kind of obligation on the college to elect into the order of fellows.

In the year 1836, the order of candidates was abolished, and, in the year 1859, the new order of members was established,<sup>2</sup> and it was decided that the fellows should be elected solely from the persons constituting such order.

The fellows, or those who are admitted into the fellowship, community, commonalty, or society of the college, in whom alone is vested the government of the corporation, and the power of being present and voting at meetings, have, from the foundation of the college, attempted to limit their own number by very stringent and arbitrary by-laws, the validity of many of which was exceedingly doubtful, and the college has, in consequence, been involved in much litigation, and many acrimonious literary controversies.<sup>3</sup>

It was, at first, provided that no one should be admitted until he had practised for some time under a probationary licence, which time was afterwards limited to four years. In 1637, it was ordained that no person should be admitted until he had performed all his exercises and disputations in one of the British universities, without dispensation; and in 1737, that none should be admitted who should not first have been of the number of candidates for one whole year, or have publicly read physic for three years in some university of Britain, or been doctor of the chair in some university of this kingdom, or ordinary king's physician. In 1751, it was declared, by way of explanation of the

<sup>1</sup> By 23 & 24 Vict. c. 66.

<sup>2</sup> By-law, Aug. 8th, 1859.

<sup>3</sup> See Goddard's case, 1 Keb. 75, 1 Lev. 19; Dr. Letch's case, 4 Burr, 2186; Rex v. Askew, 4 Burr, 2195; Rex v. The College of Physicians, 5 Burr, 2740; Same v. Same, 7 T. R. 282.

words "any British university" in former by-laws, that no person should be admitted who was not a doctor of physic of Oxford or Cambridge.

In 1765, another by-law was passed, excluding all except such candidates, and the king's or queen's ordinary physician with salary, and the regius professors of physic of Oxford and Cambridge; and in, or soon after the year 1768, it was declared that no person should be admitted to the order of candidates, unless he had been created a doctor of physic in the University of Oxford or Cambridge (or, having obtained that degree in the University of Dublin, had been incorporated into the University of Oxford or Cambridge), and until he had been examined as to his knowledge of physic at three of the greater or lesser meetings of the college; and that no person might be admitted a fellow unless he had been a candidate for a year, except that the president might once in every other year propose at the *comitia minora* one licentiate of ten years' standing, and if the greater part of the *comitia minora* should consent, propose him at the next *comitia majora* to be elected a fellow; and if the greater part of the fellows then present should consent, such licentiate might be admitted a fellow; and that any of the fellows might propose a licentiate of seven years' standing, and of the age of thirty-six years, in the *comitia majora* to be examined; and if the greater part of the fellows should consent, the licentiate might be examined by the president, or vice-president, and censors; and if approved by the greater part of the fellows then present, he might be proposed to the next *comitia majora* to be a fellow, and admitted, should the majority of fellows then present consent.

All these by-laws have been long since repealed, and fellows are now chosen by ballot from among those members of four years' standing who have distinguished themselves in the practice of their profession.<sup>1</sup>

In the year 1861, it was decided that the college might grant licences, without restricting the holders thereof from compounding and supplying for gain the medicines prescribed by them, and that to grant such licences was no invasion of the privileges of the Apothecaries' Company.<sup>2</sup>

<sup>1</sup> See *post*, "Fellows" and "Members."

<sup>2</sup> The Attorney-General v. The Royal College of Physicians, 1 Jo. and H. 561.

It is provided by the Medical Act,<sup>1</sup> that it shall be lawful for her Majesty to grant to the corporation of the college a new charter, and thereby to give to such corporation the name of "The Royal College of Physicians of England," and to make such alterations in the constitution of the corporation as she may deem expedient; and that it shall be lawful for the corporation to accept such charter, under their common seal, and that such acceptance shall operate as a surrender of all charters granted to the corporation, except the charter granted by King Henry VIII., and shall also operate as a surrender of such charter, and of any rights, powers, or privileges conferred by, or enjoyed under the Act 14 & 15 Hen. VIII. c. 5, confirming the same, as far as such charter and Act, respectively, may be inconsistent with such new charter.

It is also provided that, within twelve months of the granting of such charter, any fellow, member, or licentiate of the Royal College of Physicians of Edinburgh, or of the Queen's College of Physicians of Ireland, who may be in practice as a physician in any part of England, shall be at liberty to become a member of the college, and shall be entitled to receive the diploma of the college, and to be admitted to all the rights and privileges thereunto appertaining, on the payment of a registration fee of £2 to the college.

It is further provided by 23 & 24 Vict. c. 66, that such new charter may be granted to the college, either by its present name, or by the name of "The Royal College of Physicians of England," and that, if such charter be granted by the latter name, the college shall retain all the same rights, and be subject to all the same duties, as if such charter had been granted by its then existing name, and shall continue to hold all property belonging to the corporation, either beneficially or in trust, notwithstanding the change of name.

## II. *The President.*

The president is elected annually<sup>2</sup> from amongst those fellows who have been fellows of the college for ten years at the least, and is, *ex officio*, a member of all committees.

<sup>1</sup> 21 & 22 Vict. c. 90, s. 47.

<sup>2</sup> 23 and 24 Vict. c. 66, s. 6.



### III. *The Censors.*

1. Four censors are elected annually by the president and fellows, from among the fellows of the college, and are capable of re-election.

2. The duties of the censors are to inquire into any alleged misconduct, or infringement of the by-laws, by fellows, members, or licentiates, and to carry into effect the by-laws and regulations of the college in regard to such matters, and to act as auditors of the accounts of the college.

3. The censors, together with the president, form a board for inquiring into and testing the qualifications of all candidates for the membership, before such candidates are proposed to the fellows for election, and for other purposes, in accordance with the by-laws and regulations of the college.

### IV. *The Council.*

1. The council consists of the president, censors, and treasurer of the college, and of twelve other fellows of the college, elected members of the council, four of whom go out of office by rotation annually.

2. The council prepare, each year, a list of fellows whom they recommend for election on the council; nominate annually, the members to be proposed for election as fellows, four fellows to be proposed for election as censors, one fellow to be proposed for election as treasurer, three fellows to be proposed for election as examiners on the subjects of preliminary education, and ten fellows to be proposed for election as examiners on the subjects of professional education; and transact all business referred to them by the college.

### V. *Fellows.*

1. The fellows are elected from members of at least four years' standing, who have distinguished themselves in the practice of medicine, or in the pursuit of medical, or general science or literature.

2. The members to be proposed for election as fellows must be nominated by the council, and no member may be so nominated who has not received the votes of at least ten members of the council.

3. No person is admitted as fellow unless he has been elected



by a majority of the fellows present at the meeting of the college held annually, on the 25th day of June.

4. Each fellow must, on admission, sign a declaration to the following effect :—"I faithfully promise, to the best of my ability, to maintain the welfare of the college ; to observe and obey its statutes, by-laws, and regulations, and to submit to such penalties as may be lawfully imposed for any neglect or infringement of them ; to regard as secret its proceedings, when the college so desires it ; to admit to the fellowship those only who are distinguished by character and learning ; and, finally, to do everything in the practice of my profession, to the honour of the college, and the welfare of the State."

5. The government of the corporation, and the power of making and altering by-laws, and of being present at general meetings of the corporation, and of voting at all elections, and on all other business to be transacted at such general meetings, are vested in the president and fellows only.

#### VI. *Members.*

1. The members of the college are alone eligible to the fellowship. They are not entitled to any share in the government of the college, or to attend or vote at general meetings of the corporation.

2. All persons who were admitted, before February 16th, 1859, licentiates of the college, are entitled to be admitted to the membership, if they have, since their admission as licentiates, obeyed the by-laws, and if they accept such membership, and engage to obey the by-laws for the future.

3. Any extra licentiate who produces testimonials as to character satisfactory to the censors, and assures them that he is not engaged in the practice of pharmacy, and who complies with such other regulations as are required by the by-laws of the college, may be proposed to the college to be admitted a member.

4. Any person who satisfies the college touching his acquirements in general science and literature, and his knowledge of medicine, surgery, and midwifery, and who complies with the by-laws and regulations of the college, may be proposed to the college to be admitted a member ; but every such candidate who commenced his professional studies after September, 1861, must satisfy the censors' board that, previously to the commencement of

his professional studies, he obtained a degree in arts from some university of the United Kingdom or of the colonies, or from some other university specially recognised by the Medical Council; or that he passed examinations equivalent to those required for a degree in arts. All other candidates must undergo an examination by the college on the subjects of general education.

5. Every candidate for membership must be of the age of twenty-five years, and obtain a testimonial from a fellow or member of the college, satisfactory to the censors' board, that, as regards moral character and conduct, he is a fit and proper person to be admitted a member.

6. Every candidate must have been engaged in professional studies during a period of five years, of which four years at least must have been passed at a medical school or schools recognised by the college.

7. Every candidate must produce evidence, satisfactory to the censors' board, of his having studied the following subjects:—Anatomy (with Dissections) and Physiology, during two winter sessions; Chemistry, six months; Practical Chemistry, *Materia Medica*, Practical Pharmacy, and Botany, three months each; Morbid Anatomy, six months; Principles and Practice of Medicine, and Principles and Practice of Surgery, during two winter sessions;<sup>1</sup> Clinical Medicine, during three winter sessions, and three summer sessions;<sup>1</sup> Clinical Surgery, two winter, and two summer sessions;<sup>1</sup> Midwifery, and the Diseases peculiar to Women, and Forensic Medicine, three months each. Of having attended diligently, during three winter and three summer sessions, the medical practice, and, during three winter and two summer sessions, the surgical practice, of a hospital containing at least 100 beds. Of having been engaged during six months in the clinical study of diseases peculiar to women; and of having served the office of clinical clerk in the medical wards during at least six months.

8. Candidates who have prosecuted their studies abroad, must, nevertheless, have attended during at least twelve months, the medical practice of a hospital in the United Kingdom containing at least 100 beds.

<sup>1</sup> These requirements apply to candidates who commenced their professional education, in the United Kingdom, on or after October 1st, 1867, or at a recognised foreign or colonial school, on or after October 1st, 1868.

9. Every candidate is required to pass three professional examinations at the college—one after the termination of the second winter session of professional study at a recognised medical school; the second after the termination of four years of professional study; and the third after the completion of the required course of professional study.

10. Persons who have passed certain examinations conducted by the various surgical corporate bodies, or at universities in the United Kingdom, are exempted from re-examination in the subjects comprised in such examinations.

11. If any candidate who has attained the age of forty years, produces testimonials, not merely satisfactory as to his moral character and conduct, and his general and professional acquirements, but further showing that he has improved the art, or extended the science of medicine, or has, at least, distinguished himself highly as a medical practitioner; the censors' board, having well weighed and considered these testimonials, may, if they see fit, submit them to the fellows at a general meeting, and it will be determined by the votes of the fellows present, or of the majority of them, taken by ballot, whether the candidate shall be admitted to examination, which will, in every such case, be as full and complete as the censors may deem sufficient.

12. No candidate is admitted to examination who refuses to make known, when required by the president and censors, the nature and composition of any remedy he uses; or who is engaged in trade; or who dispenses medicines, or makes any engagement with a chemist, or any other person, for the supply of medicines; or who practises medicine or surgery in partnership, by deed or otherwise, so long as such partnership continues.

13. Every candidate approved by the censors' board is proposed at the next general meeting of fellows, as qualified to become a member, and, if the majority of the fellows present consent, he is, on complying with the regulations prescribed by the by-laws, admitted a member of the college.

14. Every member must, on admission, sign a declaration to the following effect:—"I give my faith that I will observe and obey the statutes, by-laws, and regulations of this college, relating to members, and will submit to such penalties as may be lawfully imposed for any neglect or infringement of them; and I will, to the best of my ability, do all things in the practice of my



profession, for the honour of the college, and the good of the public.”

#### VII. *Licentiates.*

1. To obtain the licence of the college, it is necessary—

- a.* To be of the age of twenty-one years, at least.
- b.* To obtain satisfactory testimonials of moral character.
- c.* To be registered as a medical student, and to pass an examination in the subjects of general education recognised by the college, before the commencement of professional study.
- d.* To be engaged in professional studies during four years, of which at least three winter sessions and two summer sessions must be passed at a recognised medical school or schools, and one winter session and two summer sessions in one or other of the following ways:—Attending the practice of a hospital or other institution, recognised by the college for that purpose; receiving instruction as the pupil of a legally qualified practitioner, holding any public appointment which affords opportunities, satisfactory to the examiners, of imparting a practical knowledge of medicine, surgery, or midwifery; attending lectures on any of the required subjects of professional study at a recognised place of instruction.
- e.* To attend, during three winter and two summer sessions, the medical and surgical practice at a recognised hospital or hospitals.<sup>1</sup>
- f.* To be engaged during six months in the clinical study of diseases peculiar to women.
- g.* To study the following subjects:—Anatomy (with dissections) during two winter sessions; Physiology, during two winter sessions; Chemistry, during six months; Practical Chemistry, during three months; *Materia Medica*, during three months; Practical Pharmacy, during three months (by practical pharmacy is meant instruction in the laboratory of a registered medical practitioner, or of a member of the Pharmaceutical Society of Great Britain, or of a public hospital or dispensary recognised by the college); Botany, during three months (this course of lectures may be attended

<sup>1</sup> This requirement applies to candidates who commenced their professional education, in the United Kingdom, on or after October 1st, 1867, or at a recognised foreign or colonial school, on or after October 1st, 1868.



prior to the commencement of professional studies; and any candidate producing satisfactory evidence that botany formed one of the subjects of his preliminary examination is exempt from attendance on this course); Morbid Anatomy, during six months (this includes attendance and instruction in the post-mortem room during the period of clinical study); Principles and Practice of Medicine, during two winter sessions (it is required that the principles of public health should be comprised in this course of lectures, or in the course of lectures on forensic medicine. The attendance on these lectures must not commence earlier than the second winter session at a recognised medical school); Principles and Practice of Surgery, during two winter sessions<sup>1</sup> (the attendance on these lectures must not commence earlier than the second winter session at a recognised medical school); Clinical Medicine, during two winter sessions and two summer sessions<sup>1</sup> (the attendance on these lectures must not commence until after the first winter session at a recognised medical school); Clinical Surgery, during two winter sessions and two summer sessions<sup>1</sup> (the attendance on these lectures must not commence until after the first winter session at a recognised medical school. By Clinical Medicine, and Clinical Surgery, are meant special study and instruction at the bedside, with lectures on cases); Midwifery, and the Diseases peculiar to Women, during three months (certificates must also be produced of attendance on not less than twenty Labours, and of instruction and proficiency in Vaccination); Forensic Medicine, during three months.

*h.* To pass two professional examinations at the college: one after the second winter session of professional study at a recognised medical school; and the other after the termination of four years of professional study.

2. Persons who have passed certain examinations conducted by the various surgical corporate bodies, or at universities in the United Kingdom, are exempted from re-examination in the subjects comprised in such examinations.

3. A candidate, being a registered medical practitioner, whose

<sup>1</sup> These requirements apply to candidates who commenced their professional education, in the United Kingdom, on or after October 1st, 1867. or at a recognised foreign or colonial school, on or after October 1st, 1868.

qualification or qualifications were obtained before January 1st, 1861, if, with the consent of the college, admitted a candidate for the licence, is exempted from such parts of the professional examinations as his qualifications may seem to the examiners to render, in his case, unnecessary.

4. Every candidate must, before receiving the licence, sign a declaration to the following effect:—"I faithfully promise to observe and obey the statutes, by-laws, and regulations of the college relating to licentiates, and to submit to such penalties as may be lawfully imposed for any neglect or infringement of them."

5. Licentiates are not entitled to any share in the government of the college, or to attend or vote at general meetings of the corporation.

#### VIII. *Extra-Licentiates.*

By the statute 14 & 15 Hen. VIII. c. 5, it was enacted that six persons, named in the original charter granted to the college, together with two others, to be chosen by them, should be called "elects," and provision was made for filling up vacancies in their number.<sup>1</sup> It was also provided, by the same Act, that from thenceforth no person should be suffered to practise physic in other parts of England, beyond the City of London and precinct of seven miles of the same, until he should have been examined, at London, by the president and three of the elects, and have received from them letters-testimonial.<sup>2</sup>

The college, accordingly, continued to grant under these regulations "extra-urbem licences," entitling the holders thereof, who were called "extra-licentiates," to practise in other parts of England, and in Wales and Berwick-upon-Tweed, but not within the precinct of London. By the Medical Act, however, which opened the practice of medicine throughout her Majesty's dominions to all persons duly registered with a qualification entitling them to practise medicine, the main function of the elects was virtually superseded, and the college ceased to grant extra-urbem licences, and, in the year 1860, the elects were abolished, their powers and functions were repealed, and all trusts vested in them were transferred to the censors.<sup>3</sup> All

<sup>1</sup> S. 2.

<sup>2</sup> S. 3; exception was made, however, by this section in favour of graduates of Oxford and Cambridge.

<sup>3</sup> 23 & 24 Vict. c. 66, s. 5.

persons, however, who have obtained the extra-urbem licence are entitled to be registered, and to practise in any part of her Majesty's dominions.<sup>1</sup>

IX. *The Duties and Conduct of Fellows, Members, and Licentiates.*

The following are the by-laws of the college, by which are regulated the duties and conduct of fellows, members, and licentiates, and the penalties imposed by the college for neglect or infringement of any of its statutes or regulations.

1. No fellow of the college shall be entitled to sue for professional aid rendered by him.<sup>2</sup>

2. No fellow of the college shall divulge any of the proceedings of the meeting held for the election of censors, or other college officers; or of fellows or members of the college; or of any meeting, the proceedings of which he shall be required by the president to keep secret.

3. No fellow of the college shall leave a meeting (except by permission of the president), until the president shall have declared such meeting to be dissolved.

4. No fellow or member of the college shall officiously, or under colour of a benevolent purpose, offer medical aid to, or prescribe for, any patient whom he knows to be under the care of another legally qualified medical practitioner.

5. Every fellow or member of the college, in prescribing for a patient, shall write on his prescription the date thereof, the name of the patient, and the initial letters of his own name.

6. If two or more physicians, fellows or members of the college, be called in consultation, they shall confer together with the utmost forbearance, and no one of them shall prescribe, or even suggest, in the presence of the patient, or the patient's attendants, any opinion as to what ought to be done, before the method of treatment has been determined by the consultation of himself and his colleagues; and the physician first called to a patient shall, unless he decline doing so, write the prescription for the medicines agreed upon, and shall sign the initials of the physician or physicians called in consultation, he placing his own initials the last. If any difference of opinion should arise, the greatest moderation and forbearance shall be observed, and the

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A).

<sup>2</sup> See 21 & 22 Vict. c. 90, s. 31. This does not extend to members.



fact of such difference of opinion shall be communicated to the patient or the attendants by the physician who was first in attendance, in order that it may distress the patient and his friends as little as possible.

7. No fellow or member of the college shall be engaged in trade; or dispense medicines, or make any engagement with a chemist, or any other person, for the supply of medicines; or practise medicine or surgery in partnership, by deed or otherwise.

8. No fellow, member, or licentiate of the college shall refuse to make known, when required by the president and censors, the nature and composition of any remedy he uses.

9. No fellow, member, or licentiate of the college shall assume the title of doctor of medicine, or use any other name, title, designation, or distinction implying that he is a graduate in medicine of a university, unless he be a graduate in medicine of a university.

10. Licentiates of this college shall not compound or dispense medicines, except for patients under their own care.

11. No licentiate of this college shall, by virtue of his licence, represent himself as being a fellow or member of a college of physicians.

12. If it shall at any time hereafter appear, or be made known to the president and censors, that any fellow or member of the college has obtained admission into the college, or that any licentiate of the college has obtained the licence of the college, by fraud, false statement, or imposition, or that any fellow, member, or licentiate has been guilty of any great crime or public immorality, or has acted in any respect in a dishonourable or unprofessional manner, or has violated any statute, by-law, or regulation of the college, relating to fellows, members, or licentiates, as the case may be, the president and censors may call the fellow, member, or licentiate so offending before the censors' board, and, having investigated the case, may admonish, or reprimand, or inflict a fine not exceeding £10; or, if they deem the case of sufficient importance, may report the case to the college, and thereupon a majority of two-thirds of the fellows present at a meeting of the fellows, which must be specially summoned for that purpose, may declare such fellow to be no longer a fellow, or a member of the college, as the college shall determine; or such member to be no longer a member of the college; or such



licentiate to be no longer a licentiate, and his licence shall be revoked and withdrawn; and such fellow, member, or licentiate shall forfeit all the rights and privileges which he does or may enjoy as a fellow, or as a member, or as a licentiate, as the case may be; and his name shall be expunged from the list of fellows, or from the list of members, or from the list of licentiates, as the case may be, accordingly.

#### X. *Rights of Fellows, Members, and Licentiates.*

1. Fellows of the college are entitled to be registered, and to practise physic, including therein the practice of medicine, surgery, and midwifery, in any part of her Majesty's dominions.<sup>1</sup> They are, however, debarred by a by-law of the college, passed in conformity with power to that effect given by the Medical Act,<sup>2</sup> from suing for professional aid rendered by them.<sup>3</sup>

2. Members and licentiates are entitled to be registered, and to practise physic as fully as fellows of the college. They are also entitled to recover their reasonable charges and fees, with full costs of suit, in any court of law.<sup>4</sup>

### *Sec. II.—The Royal College of Physicians of Edinburgh.*

#### I. *History of the College.*<sup>5</sup>

The first attempt to incorporate the medical practitioners in Scotland was made in the year 1617, when King James I., of England, issued an order to the Parliament for the establishment of a College of Physicians in Edinburgh. This order was, however, never carried out.

In 1630, the attempt was renewed, and King Charles I. referred the matter to his Privy Council; but nothing more was done in his reign. In 1656, during the protectorate of Cromwell, a patent was made out instituting a College of Physicians of Scotland; but the scheme was frustrated by the opposition of

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A); 32 Hen. VIII. c. 40, s. 3.

<sup>2</sup> 21 & 22 Vict. c. 90, s. 31.

<sup>3</sup> See *post*, "Recovery of Charges," c. vi. sec. 1.

<sup>4</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A); 22 Vict. c. 21, s. 4.

<sup>5</sup> See the Historical Sketch and Laws of the Royal College of Physicians of Edinburgh, from its institution to December, 1865. Printed for the college, 1867.

other medical bodies, and the death of the Protector. The matter was, however, again warmly taken up, and eventually, in 1681, the Royal College of Physicians of Edinburgh was instituted, and a charter of incorporation obtained from King Charles II.

This charter imposed certain penalties on persons practising medicine within the jurisdiction of the college, who had not obtained its licence or diploma; and conferred on the college the power of calling before it, and fining, unlicensed practitioners, of punishing persons practising within its jurisdiction who should violate any of the laws of the college, and of examining, along with a magistrate and chemist, the medicines kept in the apothecaries' shops, and destroying such as were found not to be of good quality.

The college, eventually, abandoned in practice the exclusive rights conferred on it, and ceased to exercise an inspection over the shops of the apothecaries, and, in 1843, gave instructions that the draft of a new charter should be prepared. This was finally adjusted in 1845, and the subject was often discussed from that time, but no decisive action was taken until after the passing of the Medical Act, 1858. The principal objects proposed were, to get rid of the restrictive clauses in the existing charter; to introduce an order of members; and to obtain the power to examine all applicants for the licence, and to expel unworthy members. Finally, in 1861, was granted the charter under which the college now discharges its functions; the name of "Royal College of Physicians of Edinburgh" being, in conformity with the express desire of the college, retained, in preference to that of Royal College of Physicians of Scotland, which the Medical Act authorized her Majesty to bestow.<sup>1</sup>

By this charter the college is constituted a body corporate, consisting of a president and vice-president, a council, fellows, and members, with power to grant licences, to censure, suspend, or depose any fellow, member, or licentiate who has obtained admission by false pretences, or violated any of the by-laws, and to make by-laws for promoting the science of medicine, for duly ordering the practice of the same, and for the good government, order, and direction of the college.

<sup>1</sup> 21 & 22 Vict. c. 90, s. 49; 23 & 24 Vict. c. 66, ss. 2, 3, 4.

## II. *Fellows.*

1. The fellows of the college are elected by ballot, but no one can be elected a fellow until he has been at least one year a member of the college, and has attained the age of twenty-five years.

2. The fellows alone are entrusted with the administration of the property and internal affairs of the college, and also with the enactment of its laws, the election of its fellows and its members, the admission of its licentiates, and the election of the president and council.

3. Fellows are entitled to be registered, and to practise medicine in any part of her Majesty's dominions.<sup>1</sup>

## III. *Members.*

1. Any licentiate of a college of physicians, or graduate of a British or Irish university, who has attained the age of twenty-four years, and with whose knowledge of medical and general science the college may be satisfied, may be admitted a member.

2. Members are entitled to be registered, and to practise medicine in any part of her Majesty's dominions.<sup>2</sup>

## IV. *Licentiates.*

1. Every applicant for the licence of the college must satisfy the council that he is twenty-one years of age, is of a good moral character, is not under articles of apprenticeship, and has fulfilled all the requirements that were in force at the date when he commenced his medical studies.

2. Before obtaining the licence, it is necessary—

*a.* To pass a preliminary examination in literature and science, or to take a degree in arts in a British university, or foreign university approved of by the college, or to pass the examination of the national educational bodies, or of any of the licensing bodies recognised by the Medical Act.

*b.* To be engaged for four years, at least, in the study of medicine.

*c.* To attend certain courses at a university, or at some medical school recognised by the college.

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A).

<sup>2</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A); 22 Vict. c. 21, s. 4.

d. To attend the practice of a public hospital, containing not fewer than eighty beds, during a period of not less than twenty-four months, twelve of which must be spent in attendance on the medical wards.

e. To attend at least six cases of labour, under the superintendence of a qualified medical practitioner.

f. To study vaccination under a competent and recognised teacher.

g. To pass two professional examinations held by the college; the one at the completion of two, and the other at the completion of four years of medical study.

3. Licentiates of the Royal College of Physicians of London, or of the King and Queen's College of Physicians in Ireland, graduates in medicine of British and Irish universities, licentiates in surgery of one of the Royal Colleges of Surgeons, or of the Faculty of Physicians and Surgeons of Glasgow, of five years' standing, or licentiates of an Apothecaries' Company of five years' standing, who do not deal in drugs, are only required to undergo a modified examination.

4. Licentiates are entitled to be registered, and to practise medicine in any part of her Majesty's dominions.<sup>1</sup>

5. The licence of the college may, also, be obtained in conjunction with that of the Royal College of Surgeons of Edinburgh, or of the Faculty of Physicians and Surgeons of Glasgow, after a series of joint examinations, and students who pass these examinations, and conform with certain other regulations, will be entitled to register the two separate qualifications, and to practise medicine, surgery, and pharmacy in any part of her Majesty's dominions.<sup>2</sup>

#### V. *Misconduct of Fellows, Members, or Licentiates.*

1. Any fellow, or member, or licentiate of the college who by himself, co-partners, or servants, keeps a public apothecary's, druggist's, or chemist's shop, or whose name is erased from the register by the General Council under s. 29 of the Medical Act,<sup>3</sup> or who, in the opinion of the college, is guilty of conduct unbecoming the character of a physician, forfeits thereby all his

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A).

<sup>2</sup> 21 & 22 Vict. c. 90, ss. 15, 19, 31, and Sch. (A).

<sup>3</sup> See *post*, "Punishment of Abuses," c. vii. sec. 3, § I.



rights and privileges as a fellow, member, or licentiate, and his name will be expunged from the list.

2. Any fellow, member, or licentiate who may, after due inquiry, be adjudged by the fellows to have acted in an unbecoming or unprofessional manner, may be censured, or may be deprived, for such time as the fellows may determine, of all the rights and privileges which, as fellow, member, or licentiate, he does or may enjoy.

### *Sec. III.—The King and Queen's College of Physicians in Ireland.*

#### *I. History of the College.*

About the year 1617, the heads of the Irish Government, and of the profession of physic in Ireland, conceived the idea of founding a college of physicians in that country, with privileges and immunities similar to those enjoyed by the London college; and at length, in 1626, a letter was obtained from King Charles I. directing the incorporation of a college of physicians in Dublin, but from the unsettled state of the times, this design was not then carried into effect.

In 1654, a body was founded in Dublin, in connection with the university, called "The President and Fraternity of Physicians;" and in 1667 this body was incorporated by a charter of King Charles II., under the title of "The President and Fellows of the College of Physicians in Dublin," with the same general powers as were possessed by the London college, and with the entire control of the practice of physic in Dublin; and provision was made in such charter that no person should practise in Dublin, or within seven miles thereof, without the licence of the college.

At the request of the college, this charter was surrendered on the 14th of December, 1692, and a new charter was granted by William and Mary on the 15th of December in the same year, under which, and under some subsequent alterations made by Acts of Parliament, the college is now governed. By this charter the name of the incorporation was changed to "The President and Fellows of the King and Queen's College of Physicians in Ireland," and its jurisdiction was considerably extended.

Under the regulations of the charter no one could practise physic in Dublin, or within seven miles thereof, unless he were a fellow or licentiate of the college; nor could any but graduates in physic of Oxford, Cambridge, or Dublin practise in the rest of Ireland, unless licensed by the college. These restrictions are swept away, as far as regards persons registered with a qualification in medicine, by the Medical Act. Large powers are entrusted, by the charter, to the president and censors, for the suppression of quackery, for the supervision of practisers, the examination of medicines, and inquisition into all matters relating to the profession of physic within the limits of the college. Certain exemptions are also conferred upon all members of the college.

Under the provisions of 1 Geo. III. c. 14 (Irish),<sup>1</sup> the college obtained the power of annually appointing four of its fellows to be inspectors of the shops, &c., of apothecaries, chemists, and druggists in Dublin, and within ten miles thereof. Two assistant inspectors were appointed by the Warden and Masters of the Corporation of Apothecaries, or Guild of St. Luke, subject to the veto of the college, whose inspectors might proceed without the assistants, in default of the appointment of the latter.

This provision is still in force, and inspectors of apothecaries' shops were regularly appointed, and acted under it until 1864. The college then determined on suspending these appointments for the present, but it may at any time resume the exercise of this right.

By the Medical Act,<sup>2</sup> it is enacted that it shall be lawful for her Majesty to grant to the corporation of this college a new charter, and thereby to give to such corporation the name of "The Royal College of Physicians of Ireland," and to make such alterations in the constitution of the said corporation as to her Majesty may seem expedient; and that it shall be lawful for the said corporation to accept such charter under their common seal, and that such acceptance shall operate as a surrender of the charter granted by King William and Queen Mary, so far as it may be inconsistent with such new charter; and it is further provided by the statute 23 and 24 Vict. c. 66,<sup>3</sup> that such new charter may be granted to

<sup>1</sup> Made perpetual by 30 Geo. III. c. 45, s. 11 (Ir.)

<sup>2</sup> 21 & 22 Vict. c. 90, s. 51.

<sup>3</sup> Ss. 2, 3, and 4.

the college, either by its present name, or by the name of "The Royal College of Physicians of Ireland," and that if such charter be granted by the latter name, the college shall retain all the same rights, and be subject to all the same duties, as if such charter had been granted by its then existing name, and shall continue to hold all property belonging to the corporation, either beneficially or in trust, notwithstanding the change of name.

## II. *Fellows.*

1. The fellows alone constitute the corporation, and govern the college. From among them are elected annually the president, four censors,<sup>1</sup> the treasurer, the registrar, the honorary librarian, and the members of the various committees.

2. The number of fellowships was, by the charter of William and Mary, limited to fourteen, but the number is now unlimited.<sup>2</sup>

3. Fellows are elected by ballot. One dissentient vote in five excludes.

4. No fellow of any college of surgeons is admissible to the fellowship, and every candidate for the fellowship must sign a declaration that he will not become a fellow of any college of surgeons, so long as he remains a fellow of this college.

5. No person can be balloted for as a fellow until he is a licentiate of the college of five years' standing, or until he is a licentiate of two years' standing, being also a graduate in arts of some university of the United Kingdom, or having been seven years in practice previously to his admission as licentiate.

## III. *Honorary Fellows.*

There are two classes of honorary fellows, who are balloted for in the same way as fellows.

1. Ex-fellows, so elected on obtaining an office, the appointment to which *ipso facto* vacated their fellowships.

2. Those elected for eminence as physicians, or as men of literary and scientific attainments.

## IV. *Candidates.*

Candidates were those from whom the fellows were chosen,

<sup>1</sup> The duties of the censors are now chiefly confined to examining candidates for the licence to practise.

<sup>2</sup> 1 Geo. III. c. 14 (Irish); made perpetual, 30 Geo. III. c. 45, s. 11 (Ir.); 40 Geo. III. c. 84 (Ir.); 25 Vict. c. 15.



when a vacancy occurred in the original number of fourteen. They were required to be qualified as doctors in physic previous to admission to examination for licence, after passing which they were styled candidates. This order was set aside in 1755, restored in 1785, and finally abolished in 1792.

#### V. *Licentiates.*

In order to obtain the licence in medicine, it is necessary—

*a.* To be twenty-one years of age.

*b.* To be engaged, during a period of four years, in the study of medicine, at a school or schools recognised by the college.

*c.* To be a student in arts of one year's standing of any university in the United Kingdom, requiring examinations in the first year; or to be a graduate or licentiate in medicine or surgery of any university or college in the United Kingdom; or to pass a preliminary examination in arts previous to, or within the first two years of professional study.

*d.* To produce evidence of having studied, at a school or schools recognised by the college, the following subjects: Anatomy, Physiology, Practical Anatomy, Chemistry, Practical Chemistry, Materia Medica, and Botany, Medical Jurisprudence, Practice of Medicine and Pathology, Surgery, and Midwifery; and of having attended a medico-chirurgical hospital in which regular courses of clinical lectures are delivered, together with clinical instruction, for twenty-seven months, or such hospital for eighteen months, with nine months' attendance on a medical hospital, and similar courses of clinical lectures and clinical instruction, the attendance in each case being for not more than nine months in any year, and the attendance on a medico-chirurgical hospital and medical hospital not being taken out in the same year; and of having attended practical midwifery for six months at a recognised lying-in hospital, or to produce evidence satisfactory to the college, in each individual case, of having attended practical midwifery.

*e.* To pass a professional examination, one part of which may be passed after two years of medical study, or both parts of which may be passed after the completion of such studies. [Graduates in medicine of any university of the United Kingdom, or of any foreign university approved by the college;



fellows, members, or licentiates, of the Royal Colleges of Physicians of London or Edinburgh, who have been admitted upon examination; and graduates or licentiates in surgery, are required to undergo the second part of this examination only.]

*f.* To subscribe the following declaration:—

“I do hereby solemnly and sincerely promise that I will observe the statutes and by-laws of this college, and to my power endeavour that the honour of the college be preserved entire; and in all things that belong to the honour or profit thereof, I shall be ready to give my advice and assistance.

“I hereby authorize the president and fellows of the King and Queen's College of Physicians in Ireland to erase my name from the list of licentiates, and I consent to surrender the diploma received from the college, if I shall, after having obtained the licence of said college, keep open shop for the sale of medicines.

“I engage not to endeavour to obtain practice, or to attract public notice by unworthy means; I also engage that I will neither permit nor sanction the use of my name by any other person for such purposes, nor in connection with any secret remedy; and, in case of any doubt relative to the true meaning or application of this engagement, I promise to submit to the judgment of the college.

“And I solemnly and sincerely declare, that, should I violate any of the conditions specified in this declaration, so long as I shall be either a licentiate or fellow of the college, I thereby render myself liable, and shall submit to the censure of the college, or to expulsion and surrendering of the diploma, whichever the president and fellows of the college shall think proper to inflict.”

## VI. *Licentiates in Midwifery.*

1. Members of the college may obtain the licence in midwifery by passing a special examination.

2. Candidates for the licence in midwifery, who are not members of the college, are admitted to examination for such licence in midwifery, on the following qualifications:—The degree or licence in medicine or surgery from any university or college of physicians or surgeons in the United Kingdom, together with a

certificate of having attended a six months' course of lectures on midwifery, with the attendance for six months at a recognised lying-in hospital, or of having attended practical midwifery for six months.

3. Every candidate for this licence must subscribe a declaration similar to that subscribed by candidates for the licence to practise medicine.

#### VII. *Censure of Members.*

1. Any member of the college guilty of conduct unbecoming the profession of physic may be placed under the censure of the college.

2. Members of the college are expressly forbidden to consult with any member under censure, or with any person who, for the cure or alleviation of disease, uses any secret remedy, or is pronounced guilty of any conduct unbecoming the profession of physic.

#### VIII. *Remarks.*

Fellows and licentiates are entitled to registration, and to practise medicine in any part of her Majesty's dominions.<sup>1</sup>

This college invariably applies the title "Dr." to its fellows and licentiates, whether graduate doctors or not, and this it does in conformity with an ancient usage in Ireland, by which the title "Dr." has always been applied to a physician, as distinguished from that of "Mr." in the case of a surgeon.

It has been held,<sup>2</sup> however, that the college has no legal authority to grant the degree of M.D., or to authorize the use of any such designation or title, and that, consequently, neither a fellow nor a licentiate of the college is, as such, entitled to be *registered* as M.D. It appears, however, from the same case, that the title of Dr. has been very generally conceded, by courtesy, to fellows and licentiates of the college, and therefore, such fellow or licentiate assuming the title of "Dr." would, probably, not be held to have done so wilfully and falsely within the meaning of s. 40 of the Medical Act, and so to have rendered himself liable to the penalty imposed by such section.<sup>3</sup>

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A).

<sup>2</sup> *R. v. Steele*, 13 Ir. Com. L. Rep., N. S., 398.

<sup>3</sup> See, however, the Note, *post*, c. vi. sec. 4.

*Sec. IV.—The Royal College of Surgeons of England.**I. History of the College.*

From the tenth to the twelfth centuries the practice of surgery, in England, was almost exclusively confined to the monks and clergy. In 1163, however, the Council of Tours passed a decree prohibiting the clergy from undertaking any bloody operation, and the practice then fell into the hands of the barbers and smiths, who had been very generally employed as assistants by the monkish practitioners in performing the various surgical operations.

The former soon became by far the more important class, and in the year 1461, the freemen of the mystery of barbers, using the mystery or faculty of surgery, were, by letters patent of King Edward IV., incorporated as "The Company of the Barbers in London," and none were allowed to practise who had not been previously admitted by the masters of the company.

This charter was several times confirmed by succeeding kings, but, nevertheless, side by side with the barber-surgeons arose another body of men, who confined themselves to the practice of pure surgery, and, in the reign of Henry VIII. there were, within the City of London, two several and distinct companies of surgeons, one called the Barbers of London, and the other the Surgeons of London.

In the year 1540, these two companies were, by Act of Parliament,<sup>1</sup> united under the name of "The Masters or Governors of the Mystery and Commonalty of the Barbers and Surgeons of London." By this Act, all the privileges of the Barbers' Company were transferred to the united body; and in the reign of King Charles I., all the possessions, franchises, and liberties which they then enjoyed were, by letters patent, ratified and confirmed.

In the year 1745, the union of the two companies was dissolved,<sup>2</sup> and a distinct company of surgeons incorporated, by the name of "The Master, Governors, and Commonalty of the Art and Science of Surgeons, of London." By this Act, all the privileges which the united company had enjoyed were granted to the new company of surgeons, and the right of exclusive

<sup>1</sup> 32 Hen. VIII. c. 42.<sup>2</sup> 18 Geo. II. c. 15.

practice within London and seven miles round was conferred upon members of the company.

This corporation, however, became suspended by the death of the master on the day of election, and their consequent incapacity of electing a successor, but its affairs continued to be regularly carried on, and in the year 1800, it was re-incorporated under the name of "The Royal College of Surgeons in London," by a charter of King George III., which confirmed it in all its ancient privileges, and conferred upon it many new powers.

In the year 1822, some changes were made in the constitution of the college, and some additional powers were granted thereto, by a charter of King George IV.; and in the year 1843, still further changes in the constitution of the company were made, by a charter of Queen Victoria, and the title of the college was altered to that of "The Royal College of Surgeons of England," which it now bears.

In 1852, by a second charter of Queen Victoria, many changes were made in the government and constitution of the college. Power was given to appoint a board of examiners in midwifery, and all existing powers not altered thereby were confirmed; and, finally, in 1859, in pursuance of powers to that effect given by the Medical Act,<sup>1</sup> a third charter was granted by Queen Victoria, authorizing the council to appoint a board of examiners for testing the fitness of persons to practise as dentists, and to grant certificates of such fitness.

## II. *The Council.*

The Council, the governing body of the college, consists of twenty-four members, three of whom, when no vacancy, either by resignation or death, has occurred during the year, go out in rotation annually, in July, but are eligible for re-election by the fellows.

## III. *Fellows by Election.*

1. A member of the college, of fifteen years' standing, who was a member on September 14th, 1843, may be balloted for as a fellow, without undergoing an examination. He must, however, subscribe a declaration that he does not sell or supply

<sup>1</sup> 21 & 22 Vict. c. 90, s. 48.



drugs or medicines, or that he does so only in the due exercise or practice of his profession as an apothecary, and must obtain a certificate of recommendation from a certain number of fellows of the college, the number varying according to the candidate's place of residence.

2. Two persons, being members of the college of not less than twenty years' standing, may be elected fellows, each year, without examination. Any such person, desirous of being so elected, must produce a recommendation signed by six members of the council.

3. Every person so elected a fellow must sign a copy of the by-laws, and a declaration that he will, while a fellow of the college, observe the by-laws, and obey every lawful summons issued by order of the council, having no reasonable excuse to the contrary.

#### IV. *Fellows by Examination.*

1. In order to obtain the diploma of fellow, otherwise than under the last-mentioned regulations, it is necessary—

*a.* To be a graduate in arts of a recognised university in Great Britain or the colonies, or of a foreign university approved by the council; or to pass such examination in arts as may from time to time be required for graduation in medicine by a recognised university; or to pass a preliminary examination in arts.

*b.* To pass two professional examinations.

2. Before admission to the first professional examination, it is necessary—

*a.* To study practical pharmacy during three months.

*b.* To attend lectures on anatomy, during two winter sessions; on general anatomy and physiology, during one winter session; and on comparative anatomy, and one course on chemistry, at recognised schools.

*c.* To perform dissections during three winter sessions, and to attend a practical course of general anatomy and physiology during one summer or winter session, and a three months' course of practical chemistry.

3. Before admission to the second professional examination, it is necessary—

*a.* To be of the age of twenty-five years.

*b.* To be engaged for six years in the acquirement of professional knowledge in recognised hospitals or schools of anatomy, surgery, and medicine; or to be a member of the college, and to be so engaged for two years; or to be a B.A. or M.A. of a recognised university in the United Kingdom, and to be so engaged for five years.

*c.* To attend lectures on surgery during one winter session, and a six months' course of practical surgery at a recognised school.

*d.* To attend, at a recognised school or schools, one course of lectures on each of the following subjects, viz.:—Materia Medica, Medicine, Forensic Medicine, Midwifery, and Pathological Anatomy, and to personally conduct not less than ten labours.

*e.* To perform operations on the dead body, under the superintendence of a recognised teacher.

*f.* To be instructed in the practice of vaccination.

*g.* To attend the surgical practice of a recognised hospital or hospitals during four winter and four summer sessions, with clinical lectures on surgery, during two winter and two summer sessions, and the medical practice of such a hospital or hospitals, with clinical lectures on medicine, during one winter and one summer session.

*h.* To be engaged during not less than three months, at least twice in each week, in the observation and examination of patients at a recognised hospital or hospitals, under the direction of a recognised teacher.

*i.* To attend, during two winter and three summer sessions, demonstrations, in the post-mortem room of a recognised hospital.

*j.* To serve the office of house-surgeon or dresser, for not less than six months, in a recognised hospital.

4. A member of the college may, after the expiration of eight years from the date of his diploma, be admitted to the professional examination, upon the production of a certificate, signed by three fellows, that he has been engaged for eight years in the practice of the profession of surgery, and is a proper person to be admitted a fellow, if found qualified by examination.

5. Every member of the college must, before he is admitted as a fellow, sign the by-laws, and the same declaration as is signed

by fellows admitted by election, and every person not previously a member of the college must, before he is admitted as a fellow, sign the by-laws, and the last-mentioned declaration, with an additional clause, by which he binds himself to maintain the dignity and welfare of the college, to the utmost of his power.

#### V. *Members.*

1. In order to obtain the diploma of member, it is necessary—
  - a.* To be a graduate in arts of a recognised university; or to pass a matriculation examination at a university in the United Kingdom, or at a recognised colonial or foreign university; or to pass the preliminary examination for the fellowship of the college; or to pass the preliminary examination of the Royal College of Surgeons in Ireland, or of Edinburgh, or of the Faculty of Physicians and Surgeons of Glasgow; or to pass the examination in arts of the Society of Apothecaries of London, or of the Apothecaries' Hall of Ireland; or to pass the first-class examination of the Royal College of Preceptors; or to obtain the testamur of the Codrington College, Barbadoes, or the degree of A.A. granted by the Tasmanian Council of Education; or to pass a preliminary examination in arts.
  - b.* To pass two professional examinations, the one after the termination of the second winter session of attendance at a recognised school or schools, and the other after the termination of the fourth year of professional education.
2. Before admission to the second professional examination, it is necessary—
  - a.* To be of the age of twenty-one years.
  - b.* To be engaged, subsequently to the date of passing the preliminary examination, during four years, or during not less than four winter and four summer sessions, in the acquirement of professional knowledge.
  - c.* To attend lectures on anatomy during two, and on general anatomy and physiology, during one winter session.
  - d.* To perform dissections during not less than two winter sessions, and to attend a practical course of general anatomy and physiology during a winter or a summer session.
  - e.* To attend lectures on surgery during a winter session, and a six months' course of practical surgery.

*f.* To attend one course of lectures on each of the following subjects, viz. :—Chemistry, Materia Medica, Medicine, Forensic Medicine, Pathological Anatomy, and Midwifery, and to personally conduct not less than ten labours.

*g.* To study practical pharmacy during three months, and to attend a three months' course of practical chemistry.

*h.* To be instructed in the practice of vaccination.

*i.* To attend the practice of surgery at a recognised hospital or hospitals during three winter and two summer sessions, and, during the whole of such period, to attend demonstrations in the post-mortem rooms.

*j.* To be engaged during not less than three months, at least twice in each week, in the observation and examination of patients at a recognised hospital or hospitals, under the direction of a recognised teacher.

*k.* To attend, subsequently to the first winter session of attendance on surgical hospital practice, clinical lectures on surgery, at a recognised hospital or hospitals, during two winter and two summer sessions.

*l.* To be a dresser at a recognised hospital, or, after one year's professional education, to take charge of patients under the superintendence of a surgeon, during not less than six months, at a recognised hospital, general dispensary, or parochial or union infirmary, or in some other similar manner.

*m.* To attend, at a recognised hospital or hospitals, the practice of medicine, and clinical lectures on medicine, during one winter and one summer session.

3. Candidates who have pursued the whole of their studies in Scotland or Ireland are admitted to examination upon the production of the several certificates required, respectively, by the College of Surgeons of Edinburgh, the Faculty of Physicians and Surgeons of Glasgow, and the College of Surgeons in Ireland, from candidates for their diploma, together with a certificate of instruction and proficiency in the practice of vaccination, and satisfactory evidence of having been occupied, subsequently to the date of passing the preliminary examination, at least four entire years in the acquirement of professional knowledge; and candidates who have pursued the whole of their studies at recognised foreign or colonial universities, upon the production of the several



certificates required for their degree by the authorities of such universities, together with a certificate of instruction and proficiency in the practice of vaccination, and satisfactory evidence of having been occupied, subsequently to the date of passing the preliminary examination, at least four entire years, in the acquirement of professional knowledge.

4. Members or licentiates of any legally-constituted college of surgeons in the United Kingdom, and graduates in surgery of any university recognised for this purpose by this college, are admitted to examination on producing their diploma, licence, or degree, together with proof of being twenty-one years of age, a certificate of instruction and proficiency in the practice of vaccination, and satisfactory evidence of having been occupied, subsequently to the date of passing the preliminary examination, at least four years, in the acquirement of professional knowledge.

5. Graduates in medicine of any legally-constituted college or university, recognised for this purpose by this college, are admitted to examination on adducing, together with their diploma or degree, proof of being twenty-one years of age, a certificate of instruction and proficiency in the practice of vaccination, and satisfactory evidence of having been occupied, subsequently to the date of passing the preliminary examination, at least four entire years, in the acquirement of professional knowledge.

6. Every person, prior to his admission as a member, must sign the by-laws, and a declaration that he will, while a member, observe the by-laws, and obey every lawful summons issued by order of the council, having no reasonable excuse to the contrary, and that he will demean himself honourably in the practice of his profession, and, to the utmost of his power, maintain the dignity and welfare of the college.

#### VI. *Ad Eundem Admissions.*

Any fellow, and any member or licentiate of the Royal College of Surgeons in Ireland, of the Royal College of Surgeons of Edinburgh, or of the Faculty of Physicians and Surgeons of Glasgow, may, on complying with certain regulations, be admitted, respectively, as fellow or member of the college, without examination, if in the *bonâ fide* practice of the profession of a surgeon in England or Wales.

### VII. *Rights of Fellows and Members.*

1. Fellows and members are entitled to registration, and to practise surgery in any part of her Majesty's dominions.<sup>1</sup>

2. The council at all times protect and defend every fellow and member who may be disturbed in the exercise and enjoyment of the rights, privileges, exemptions, and immunities acquired by him as such fellow or member.

### VIII. *Misconduct of Fellows and Members.*

1. Any fellow or member who publicly professes or advertises a secret method or process of cure relating to his practice as a surgeon, or puts forth or publishes, in any way whatever, any indecent advertisement or notification relating to his said practice as a surgeon; or advertises or publishes any matter or thing prejudicial to the interest, or derogatory to the honour of the college, or disgraceful to the profession of surgery; or uses his diplomas or diploma, or knowingly permits the same to be used, in any attempt at false personation or imposition, or for any fraudulent purpose, is liable to removal, by resolution of the council.<sup>2</sup>

2. If any fellow or member be convicted of any criminal offence, he is liable to removal, by resolution of the council, if they consider the offence of which he was convicted to be of such a nature as to render him unfit to remain a fellow or member of the college.

3. Any fellow or member so removed as aforesaid, forfeits all his rights and privileges as a fellow or member, and his diplomas become void and the property of the college.

### IX. *Licentiates in Midwifery.*

1. Persons who were fellows or members of the college prior to the 1st January, 1853, are admitted to examination for the certificate of qualification in midwifery upon producing their diploma.

2. Persons having become members of the college subsequently

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A).

<sup>2</sup> It has been held that the diploma of the Royal College of Surgeons of England is not a public document, and that a person cannot be indicted at common law for forging and uttering such diploma, unless his object at the time of forging the same was to defraud some particular person, and that it is not enough that such instrument be forged with the general intent of inducing the belief that it is genuine, and that the person who has it is a member of the college.—Reg. v. Hodgson, Dears. and B. C. C. 3; 25 L. J., M. C. 78.

to the 1st January, 1853, are admitted to examination on producing their diploma, together with a certificate or certificates of having attended twenty labours.

3. Members or licentiates of any legally-constituted college of surgeons in the United Kingdom, and graduates in surgery of any recognised university, are admitted to examination on producing, together with their diploma, licence, or degree, proof of being twenty-one years of age; of having been occupied at least four entire years in the acquirement of professional knowledge; of having attended one course of lectures on midwifery; and of having attended not less than twenty labours.

4. Graduates in medicine of any recognised legally-constituted college or university, are admitted to examination on producing, together with their diploma or degree, proof of being twenty-one years of age; of having been occupied at least four entire years in the acquirement of professional knowledge; of having completed, at recognised schools, the anatomical and surgical education required of candidates for the diploma of member of the college; of having attended one course of lectures on midwifery; and of having attended not less than twenty labours.

5. Persons who commenced their professional education, either by attendance on hospital practice, or on lectures on anatomy, prior to the 1st of January, 1853, are admitted to examination on producing the several certificates of professional education required for admission to examination for the diploma of member of this college at the period when such persons, respectively, in such manner, commenced their professional education.

6. Persons who commenced their professional education, either by attendance on hospital practice, or on lectures on anatomy, after the 31st day of December, 1852, are admitted to examination on producing certificates of being twenty-one years of age; of having been engaged during at least four entire years in the acquirement of professional knowledge; of having completed, at recognised schools, the professional education required of candidates for the diploma of member of the college; of having attended one course of lectures on midwifery and the diseases of women and children; and of having personally conducted thirty labours.

7. Candidates who commenced their professional education on or after the 1st of October, 1866, must, in addition to the



certificates enumerated in the foregoing clauses, produce a certificate of having, prior to such commencement, passed a preliminary examination in general knowledge, recognised by the college.

8. Licentiates in midwifery are entitled to be registered, and to sue for their fees in any part of her Majesty's dominions.<sup>1</sup>

#### X. *Licentiates in Dental Surgery.*

1. In order to obtain this licence, it is necessary—

*a.* To be of the age of twenty-one years.

*b.* To be engaged during four years in the acquirement of professional knowledge.

*c.* To attend, at a recognised school or schools, not less than one of each of the following courses of lectures, viz.:—Anatomy, Physiology, Surgery, Medicine, Chemistry, and Materia Medica.

*d.* To attend a second winter course of lectures on anatomy, or a course of not less than twenty lectures on the anatomy of the head or neck, delivered by recognised lecturers.

*e.* To perform dissections at a recognised school, during not less than nine months.

*f.* To complete a course of chemical manipulation, under the superintendence of a recognised teacher or lecturer.

*g.* To attend, at a recognised hospital or hospitals, in the United Kingdom, the practice of surgery, and clinical lectures on surgery, during two winter sessions.

*h.* To attend, at a recognised school, two courses of lectures upon each of the following subjects, viz.:—Dental Anatomy and Physiology (human and comparative), Dental Surgery, Dental Mechanics, and one course of lectures on Metallurgy.

*i.* To be engaged, during a period of not less than three years, in acquiring a practical familiarity with the details of mechanical dentistry, under the instruction of a competent practitioner.

*j.* To attend, at a recognised dental hospital, or in the dental department of a recognised general hospital, the practice of dental surgery, during two winter and two summer sessions.

*k.* To pass the necessary examination at this college.

2. This licence does not confer upon the holder any right or title to be registered under the Medical Act.

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A).



*Sec. V.—The Royal College of Surgeons of Edinburgh.*

*I. History of the College.*

From a very remote period, the chirurgens and barbers, and chirurgion-apothecaries of Edinburgh enjoyed certain rights, privileges, and immunities, which were granted by acts of the town council of Edinburgh, and confirmed by royal charters.

In the year 1505, a college or corporation of surgeons was founded by "Seill of Cause, granted be the Towne Counsell of Edinburgh to the Craftis of Surregeury and Barbouris." This was followed by a charter of confirmation, granted by King James IV., on 13th October, 1506, and by numerous other Acts and charters ratifying and confirming previous grants, and conferring new powers and privileges upon the corporation.

In the year 1778, the company was, by a charter of King George III., erected into a royal college, under the title of "The Royal College of Surgeons of the City of Edinburgh." The college, however, still continued part of the municipality of Edinburgh, and, as the surgeons' or chirurgens' craft, formed one of the fourteen incorporated trades of the city, and the members or fellows of the craft continued to elect a deacon of craft to represent them in the convenery of the city. At length, in the year 1851, upon the surrender by the college of their charter, a new charter was granted by Queen Victoria, by which the connection of the surgeons with the incorporated trades, and the convenery, and municipal corporation of the city, was put an end to, and numerous changes were made in the constitution of the college.

By this charter, the fellows of the college were, of new, constituted, erected, and incorporated into one body, by the name of "The Royal College of Surgeons of Edinburgh," and were endowed with all the same rights and privileges, in respect of the arts and sciences of anatomy, surgery, and pharmacy, which before that time pertained to the Royal College of Surgeons of the City of Edinburgh.

Power was given to admit, under certain regulations, new fellows, by diploma, under the seal of the college; to appoint a president, a treasurer, and a council, consisting of six fellows

together with the treasurer; and to grant diplomas in surgery and pharmacy. By this charter the college still continues to be regulated.

## II. *Fellows.*

1. Fellows are elected by ballot. Three-fourths of the votes are required to entitle the candidate to be admitted; and the number of those voting must not be less than twenty.

2. Before being received as a candidate for the fellowship, it is necessary to obtain the diploma of the college, or of the Royal College of Surgeons of England, or of Ireland, or of the Faculty of Physicians and Surgeons of Glasgow.

3. Before admission as a fellow, it is necessary—

*a.* To be of the age of twenty-five years.

*b.* To be proposed and seconded by two fellows, one, at least, being resident in Edinburgh.

4. A candidate must, before taking his seat as fellow, subscribe a declaration promising to maintain and defend all the rights, liberties, and privileges of the college, and to promote the interest thereof to the utmost of his power, and to obey all the laws of the college.

5. Fellows are expressly forbidden, by the laws of the college, to keep open shop for the sale of drugs or other merchandize; or to allow their names to be connected with advertisements or publications of an indelicate or immoral nature; or to practise, or profess to practise by the use of, or according to, any secret remedy or method of treatment; or to allow their names to be connected with advertisements for the sale of any secret remedy, or for practice by the use of any secret remedy or method of treatment; or to connect themselves in partnership, or otherwise, or continue in connection with any person practising by means of, or advertising the sale of any secret remedy; or to be guilty of any deception or other immorality in the practice of their profession; or, in any other way, to conduct themselves inconsistently with the honour and decorum becoming their position as fellows of the college.

6. Every fellow is entitled to attend the meetings of the college, and to take part in the proceedings, and in the election of office-bearers.

7. Every fellow is entitled to be registered, and to practise surgery and pharmacy in any part of her Majesty's dominions.<sup>1</sup>

### III. *Licentiates.*

1. In order to obtain the surgical diploma of the college, it is necessary—

*a.* To pass a preliminary examination in general education, or to obtain a testimonial of proficiency granted by any of the educational bodies recognised by the Medical Council, and to be registered as a medical student.

*b.* To be engaged, after passing such examination, during four years, in professional study, which must include not less than four winter sessions', or three winter and two summer sessions' attendance at a recognised medical school.

*c.* To attend the following courses of lectures at recognised schools, and under recognised teachers:—Anatomy, two courses, six months each; Practical Anatomy, twelve months. [Or, in the option of the candidate, Anatomy, one course, six months; Practical Anatomy, eighteen months.] Chemistry: one course, six months. Practical or Analytical Chemistry: one course, three months. Materia Medica: one course, three months. Physiology: not less than fifty lectures. Practice of Medicine: one course, six months. Clinical Medicine: one course, six months. Principles and Practice of Surgery: one course, six months. Clinical Surgery: one course, six months. A third course of Surgery, which may either be Principles and Practice of Surgery, or Clinical Surgery, at the option of the student: one course, six months. Midwifery, and Diseases of Women and Children: one course, three months. Medical Jurisprudence: one course, three months. The six months' courses delivered in Scotland must consist of not fewer than one hundred lectures, with the exception of Clinical Medicine, and Clinical Surgery. The three months' courses must consist of not fewer than fifty lectures.

*d.* To attend six cases of labour, under the superintendence of a registered medical practitioner.

*e.* To attend, for three months, instructions in Practical

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A).

Pharmacy, under a member of the Pharmaceutical Society of Great Britain, or a recognised chemist and druggist, or the superintendent of the laboratory of a public hospital or dispensary, or a registered medical practitioner, who dispenses medicines to his patients.

*f.* To attend, for twenty-four months, a public general hospital, containing, at an average, at least eighty patients.

*g.* To attend, for six months, the practice of a recognised public dispensary, or to be engaged for six months as visiting assistant to a registered practitioner.

*h.* To be instructed in vaccination by a registered practitioner.

*i.* To attend, for three months, the post-mortem room of a recognised hospital.

*j.* To pass two professional examinations at the college, the one not sooner than at the end of the second winter session of professional study, and the other after the termination of the winter session of the last year of such study.

*k.* To be of the age of twenty-one years, at least.

2. Certain exemptions are made in favour of candidates who have passed the first examination in anatomy, physiology, and chemistry, at any of the licensing boards recognised by the Medical Act.

3. Licentiates are entitled to be registered, and to practise surgery and pharmacy as freely as fellows of the college.<sup>1</sup>

4. The diploma of the college may, also, be obtained in conjunction with the licence of the Royal College of Physicians of Edinburgh, after a series of joint examinations, and students who pass these examinations, and conform with certain other regulations, will be entitled to register the two separate qualifications, and to practise medicine, surgery, and pharmacy in any part of her Majesty's dominions.<sup>2</sup>

#### IV. *Misconduct of Fellows or Licentiates.*

If any fellow or licentiate obtain his diploma by any fraud, false statement, or imposition, or, either before or after obtaining such diploma, wilfully violate any by-law, rule, or regulation of the college, in every such case, and, after such previous notice to, and such hearing of such fellow or licentiate, as, under the

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A).

<sup>2</sup> *Id.* and s. 19.



circumstances of the case, the college may think proper, the college may, with the concurrence of not less than three-fourths in number of the fellows present at a meeting lawfully summoned for the purpose, pass such censure, or sentence, or suspension against the person so offending as to the college may seem meet; or may recall the diploma of such fellow or licentiate, and declare the same to be void; and upon such recall, every such fellow or licentiate will cease to be a fellow or licentiate of the college, as the case may be.

*Sec. VI.—The Faculty of Physicians and Surgeons of Glasgow.*

*I. History of the Faculty.*

The Faculty of Physicians and Surgeons of Glasgow was incorporated by Royal Charter, granted by King James VI. of Scotland, in the year 1599, the objects of such incorporation, as stated therein, being “to avoid the inconvenience caused by ignorant, unskilled, and unlearned persons, who, under colour of chirurgeons, are in the habit of abusing the people to their pleasure, and of destroying thereby infinite numbers of his Majesty’s subjects,” and “to take order in time coming.” This charter was, in the year 1672, ratified by an Act of the Scottish Parliament, and still continues in force, with certain slight modifications, introduced by an Act of Parliament passed in the year 1850.<sup>1</sup>

The jurisdiction of the Faculty extends over the city of Glasgow, and the counties of Lanark, Renfrew, Dumbarton, and Ayr; and the exclusive right of practising surgery within these limits was, originally, confined to the members and licentiates of the Faculty. This privilege was, however, by the last-mentioned Act, extended to fellows, members, and licentiates of any other corporation or royal college authorized by law to grant licences or diplomas in surgery, and is now of no avail against any person duly registered, with a qualification in surgery.

The Faculty have power to make by-laws in reference to surgery, to challenge, inhibit, and fine unlicensed practitioners, and to visit and inspect all shops and other places in the city of Glasgow where drugs are sold.

<sup>1</sup> 13 and 14 Vict. c. xx.

By the Medical Act,<sup>1</sup> it is provided that, if at any future period the Royal College of Surgeons of Edinburgh, and Faculty of Physicians and Surgeons of Glasgow agree to amalgamate, so as to form one united corporation, under the name of "The Royal College of Surgeons of Scotland," it shall be lawful for her Majesty to grant, and for such college and Faculty, under their respective common seals, to accept, such new charter or charters as may be necessary for effecting such union, and that such acceptance shall operate as a surrender of all charters heretofore granted to such college and Faculty.

## II. *Fellows.*

1. The qualification of fellow was first conferred in the year 1850; up to that date the Faculty consisted of "members" only. Fellows now enjoy the same powers and privileges as were before that time enjoyed by the members.

2. Candidates for the fellowship are admitted either *qua* physicians, or *qua* surgeons.

*a.* A candidate as a physician, must be a doctor in medicine of a university of the United Kingdom, or of a foreign university recognised by the Faculty.

*b.* A candidate as a surgeon, must be a licentiate of the Faculty, or a fellow, member, or licentiate of one of the Royal Colleges of Surgeons in the United Kingdom, or a master or bachelor of surgery of a university of the United Kingdom.

3. Every fellow must be elected by ballot, must obtain two-thirds of the votes, and must subscribe a declaration that he will be a faithful fellow of the Faculty, promote its interest, and be obedient to all its lawful acts, and will not willingly do prejudice to any person, by his application or advice.

4. No one is eligible for the fellowship who keeps an open shop for the sale of drugs or other merchandise.

5. Every fellow is bound, on being required by the president and council, to make known the composition and mode of preparation of any remedy he professes to have discovered, or in which he has a proprietary interest.

6. Any fellow whose name has been erased from the register by

<sup>1</sup> 21 & 22 Vict. c. 90, s. 50.

the General Council,<sup>1</sup> or who, in the opinion of the Faculty, has been guilty of any crime or public immorality, or of conduct infamous in a professional respect, will be struck off the register of fellows.

7. Honorary fellowships may be conferred by the Faculty on any gentleman distinguished in the profession.

### III. *Licentiates.*

1. The regulations under which the licence to practise may be obtained are the same as those under which the corresponding licence of the Royal College of Surgeons of Edinburgh is granted.

2. The licence may, also, be obtained in conjunction with that of the Royal College of Physicians of Edinburgh, after a series of joint examinations; and students who pass these examinations, and conform with certain other regulations, will thus obtain a double qualification in medicine and surgery.<sup>2</sup>

### IV. *Remarks.*

Notwithstanding its title, the Faculty is a corporation of surgeons only. Its fellows and licentiates are entitled to be registered, and to practise surgery and pharmacy in any part of her Majesty's dominions.<sup>3</sup>

## *Sec. VII.—The Royal College of Surgeons in Ireland.*

### I. *History of the College.*

In the year 1784, the regularly educated surgeons of the City of Dublin, who had become a numerous and considerable body, being desirous of establishing a liberal and extensive system of surgical education in Ireland, obtained from his Majesty King George III., letters patent for erecting and founding a college or corporation of surgeons in the City of Dublin, by the name of "The Royal College of Surgeons in Ireland." Under this charter the college continued to act for nearly fifty years, during which period it exercised a most beneficial influence in improving the profession of surgery, and in providing a sufficient number of

<sup>1</sup> See 21 & 22 Vict. c. 90, s. 29.

<sup>2</sup> See 21 & 22 Vict. c. 90 s. 19.

<sup>3</sup> See 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A).

properly-educated surgeons, as well for the service of the public in general, as for the army and navy.

In the year 1828, surrender was made of these letters patent, and the college was re-established, under the same title as before, by a new charter, granted by King George IV. The college, as constituted by this charter, consisted of a president, vice-president, six censors, twelve assistants, and an unlimited number of members, elected by ballot from the licentiates; power was given to the college, by the charter, to examine all persons who had undergone a certain professional education, and to grant to those approved of a licence to practise surgery, upon their undertaking not to pursue the business of an apothecary or druggist, or to sell drugs or medicines within the City of Dublin, or at any place within ten miles thereof; power was also given to examine such of the members or licentiates of the college as might require it, touching their skill in midwifery, and to grant to any such person, so examined and found qualified, a certificate of his qualification to practise midwifery. No exclusive powers were given to the college, but certain exemptions were granted to the members and licentiates, whilst continuing to exercise their profession.

In the year 1844, a supplemental charter was granted by Queen Victoria, by which many alterations were made in the previous charter. The censors, assistants, and members were abolished, and the corporation was made to consist of a president, a vice-president, a council, consisting of not more than twenty-one persons, and an unlimited number of fellows, elected by ballot. Authority was given to the council to exercise all the powers of the corporation; restrictions were placed on the admission of fellows, who were also prohibited from practising pharmacy, but not required to be chosen from the licentiates; and power was given to grant to fellows or licentiates, after examination, a certificate of qualification to practise midwifery. All existing powers, not altered thereby, were, by this charter, confirmed to the college.

## II. *Fellows.*

1. In order to obtain the diploma of fellow, it is necessary—
  - a.* To be a registered pupil, or licentiate of the college.
  - b.* To be of the age of twenty-five years.
  - c.* To be a Bachelor in Arts of some university, or to



undergo a preliminary examination, in such manner as the council may from time to time direct.

*d.* To be engaged in the acquisition of professional knowledge, during a period of not less than six years, three of which must be spent in a course of study, in one or more of the schools and hospitals of Dublin recognised by the council, and the other three of which may be spent in a course of study, in any school or schools of the United Kingdom approved by the council, or in any foreign school of repute.

*e.* To have, during the last-mentioned course of study, opportunities of practical instruction as house-surgeon or dresser in a recognised hospital.

*f.* To obtain a certificate, signed by two or more fellows of the college, of good general conduct during such course of professional education.

*g.* To attend the several courses of lectures required to be attended by candidates for letters-testimonial, together with one course of lectures on each of the following subjects:—Comparative Anatomy, and Natural Philosophy.

*h.* To write a thesis on some medical subject, or to attend and draw up clinical reports, with personal observations, of six or more medical or surgical cases.

*i.* To pass the necessary fellowship examination.

2. Candidates of the required age, who have taken the degree of B.A. in a British or Irish university, and have complied with the foregoing regulations in other respects, are admitted to examination at the end of five years of professional study, if three of such years have been passed in one or more of the recognised schools or hospitals of Dublin.

3. Licentiates of the college may, at the expiration of ten years from the date of their diploma, be admitted to the examination required for the fellowship, upon producing evidence, satisfactory to the council, that they have conducted themselves honourably in the practice of their profession.

4. Every fellow must, within one month after his election, make and subscribe the following declaration:—"I, A. B., do solemnly and sincerely declare that I am twenty-five years of age, and upwards, and that I will observe and be obedient to the statutes, by-laws, and ordinances of the Royal College

of Surgeons in Ireland, and that I will, to the utmost of my power, endeavour to promote the reputation, honour, and dignity of the said college, and that I do not now practise the business or profession of an apothecary, or druggist, or indirectly sell drugs or medicines, and that I will not, so long as I shall be a fellow of the said college, practise such business or profession."

5. Fellows are entitled to be registered, and to practise surgery, but not pharmacy, in any part of her Majesty's dominions.<sup>1</sup>

### III. *Licentiates.*

1. In order to obtain letters-testimonial from the college, it is necessary—

- a.* To be registered as a pupil on the college books.
- b.* To pass an examination, at the college, in the Greek and Latin languages.
- c.* To be engaged in professional study for not less than four years, three of which must be passed in attendance on lectures or hospitals in Dublin, London, Edinburgh, or Glasgow.
- d.* To attend, during three years, a hospital recognised by the council, where clinical instruction is given.
- e.* To attend three courses of lectures on anatomy and physiology; three courses on the theory and practice of surgery; two courses on chemistry, or, one course on general, and one on practical chemistry; one course on materia medica; one course on the practice of medicine; one course on midwifery; one course on medical jurisprudence; and one course on botany.
- f.* To perform three courses of dissections, accompanied by demonstrations.
- g.* To pass the necessary professional examination, at the college.

2. Every licentiate must, within one month of obtaining letters-testimonial, make and subscribe the following declaration:—"I, A. B., do solemnly and sincerely declare and promise that I will observe and be obedient to the statutes, by-laws, and ordinances of the Royal College of Surgeons in Ireland, and that I will, to the utmost of my power, endeavour to

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A).

promote the reputation, honour, and dignity of the said college.”

3. Licentiates are entitled to be registered, and to practise surgery in any part of her Majesty's dominions.<sup>1</sup>

#### IV. *Misconduct of Fellows or Licentiates.*

1. Any fellow who may be convicted before the council of having made a false or corrupt report, or given a false certificate to any magistrate, insurance company, public board, or other body, or individual, respecting the state of health of any person, will be expelled; and if any licentiate be so convicted, his letters-testimonial will be withdrawn.

2. Any fellow who, after his admission, may be judged by the council to be concerned, either directly or indirectly, in the practice of pharmacy, may be censured and admonished, or expelled, as the council may determine.

3. If any licentiate or fellow obtain his letters-testimonial or his diploma, respectively, by any fraud, false statement, or imposition, or, either before or after obtaining such letters-testimonial or diploma, wilfully violate any by-law, rule, or regulation of the college, the council may, after such previous notice to, and such hearing of, such fellow or licentiate, as under the circumstances they may think proper, censure and admonish the person so offending, or, if they deem it expedient, recall, and declare the letters-testimonial or diploma, respectively, of such fellow or licentiate, to be void.

#### V. *Licentiates in Midwifery.*

In order to obtain the diploma in midwifery, it is necessary—

*a.* To be a *fellow* or *licentiate* of the college.

*b.* To attend one course of lectures on midwifery and diseases of women and children, delivered by a professor or lecturer in some school of medicine or surgery recognised by the council.

*c.* To attend the practice of a recognised lying-in hospital, for six months; or the practice of a recognised dispensary for lying-in women, and children, devoted to this branch of surgery alone, for the same period.

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A).

- d. To conduct thirty labour cases, at least.
- e. To pass the necessary professional examination for the diploma in midwifery, at the college.

*Sec. VIII.—The Society of Apothecaries, London.*

*I. History of the Society.*

Before the reign of Henry VIII., when attempts were first made to regulate the practice of physic, and the medical faculty was distributed into physicians and surgeons, an apothecary seems to have been the common name, in England, for a general practitioner of medicine.<sup>1</sup>

Up to this time, also, the grocers, or poticaries, who formed one of the companies of the City of London,<sup>2</sup> united with their ordinary business the sale of such ointments, simples, and medicinal compounds as were then in use; and some, who had accumulated a store of physicians' prescriptions, which they were compelled to file, and had acquired a certain reputation for their knowledge of simples, were resorted to by those who could not afford to pay a regular physician, for the cure of minor complaints.

At about this date, however, the medical department of the grocers' trade having greatly increased, and greater difficulty having arisen in compounding the prescriptions of physicians, from the variety of mixtures introduced, shops were established for the exclusive sale of drugs, and medicinal compounds, and all kinds of chemical preparations.<sup>3</sup> The persons who kept such shops often took upon themselves to doctor their customers, as chemists and druggists not infrequently do at the present time.

In the year 1542, an Act was passed to enable irregular practitioners to administer outward medicines;<sup>4</sup> and, shortly afterwards, it was decided that the Act did not apply to those who

<sup>1</sup> In 1345, Edward III. settled a pension of 6d. a day for life upon one Coursus de Gangeland, "an apothecary of London," for his attendance on his Majesty some time before in Scotland. The grant is printed in Rymer's *Fœdera*.

<sup>2</sup> The grocers were incorporated in 1345. In 1456, they fined one John Ayshfelde 6s. 8d. "for makynge of untrewre powder of gynger, cynamon, and saunders."

<sup>3</sup> See the delineation of the apothecary, and the description of his shop in "Romeo and Juliet."

<sup>4</sup> 34 & 35 Hen. VIII. c. 8.



took any fee or reward from their patients.<sup>1</sup> The keepers of these shops were, consequently, the persons who most readily availed themselves of the permission granted by the Act, as they were enabled thereby to push the sale of, and obtain a larger price for their drugs and medicines; and from this time we find that to them exclusively was applied the title of apothecaries.

In the year 1606, the apothecaries were again united with the grocers, and incorporated by a charter of King James I., under the title of "The Wardens and Fellowship of the Grocers of the City of London." Scarcely more than ten years elapsed, however, before the apothecaries were dissociated from the freemen of the mystery of grocers, and, by a charter of the same king, granted in 1617, erected into a distinct corporation, by the name of "The Master, Wardens, and Society of the Art and Mystery of Apothecaries of the City of London." By this charter, also, they were constituted a separate City company. The society was, however, still considered a trading company, and, although they occasionally took upon themselves to prescribe, as well as supply medicines, they did not, as a rule, begin to act as general practitioners, as distinguished from physicians and surgeons, until the latter end of the seventeenth century. This encroachment was strongly resisted by the College of Physicians; but, at the beginning of the next century, their right to prescribe as well supply medicines was judicially determined,<sup>2</sup> since which time they have been legally recognised as a branch of the medical profession.

By the charter of 1617, it was provided that the society should consist of a master, two wardens, twenty-one assistants, a common clerk, and a beadle; that it should make no ordinance concerning medicines and the use of the same, without first consulting the College of Physicians; and that nothing contained in the charter should prejudice physicians or surgeons in the use of outward salves, or medicines. All persons, including freemen of the Grocers' Company, were prohibited from keeping an apothecary's shop, or mixing, preparing, applying, or giving medicines, or selling drugs, or using the art, faculty, or mystery of an apothecary, in London, or within seven miles thereof, unless they had

<sup>1</sup> *Le Colledge de Physitians' Case*, Littleton, 349.

<sup>2</sup> *Rose v. College of Physicians*, 3 Salk. 17; 6 Mod. 44.

been apprenticed to an apothecary for seven years, and had undergone an examination by the society; under a penalty of £5 per month. The master and wardens of the society, or some of the assistants appointed by them, were directed to enter, from time to time, the shops of apothecaries in London and within seven miles thereof, and to search, survey, and prove if the medicines, drugs, &c., found therein were wholesome and medicinable; and power was given to burn unwholesome drugs before the offenders' doors, and to impose upon them fines and amerciaments.

In the year 1815, was passed an Act "for better regulating the practice of Apothecaries throughout England and Wales,"<sup>1</sup> by which the charter of the Apothecaries' Society was confirmed, except as altered thereby.<sup>2</sup> That portion of the charter which directed the master and wardens to enter the shops of apothecaries was repealed,<sup>3</sup> and it was enacted that, in lieu and stead thereof, the master, wardens, and society for the time being, or any of the assistants, or any other person or persons, qualified in the manner provided by the Act, and nominated by the master and wardens, not being fewer in number than two persons, at the least, might from time to time, in the daytime, enter the shop of any person using the art or mystery of an apothecary in any part of England or Wales, and search, survey, prove, and determine if the medicines and drugs therein contained were wholesome, meet, and fit for the cure, health, and ease of his Majesty's subjects, and might burn, or otherwise destroy, all medicines, wares, and drugs which were false, unlawful, deceitful, stale, unwholesome, corrupt, pernicious, or hurtful, and report to the society the name of any person found to have the same in his possession; and power was given to the society to impose a fine of £5 for the first offence, of £10 for the second offence, and of £20 for the third, and every other offence.<sup>4</sup> Power was given to the society to appoint a court of examiners,<sup>5</sup> and it was enacted that from and after August 1st, 1815, it should not be lawful for any person or persons (except persons already in practice as such) to practise as an apothecary in any part of England or Wales, unless he or they should have been examined by such court of examiners, or the major part of them, touching his or their skill and abilities in the science and practice

<sup>1</sup> 55 Geo. III. c. 194.

<sup>2</sup> *Ib.* s. 1.

<sup>3</sup> *Ib.* s. 2.

<sup>4</sup> *Ib.* s. 3.

<sup>5</sup> See *ib.* ss. 9-13.

of medicine, and fitness and qualification to practise as an apothecary, and have received from the said court of examiners, or the major part of them, a certificate of his or their being duly qualified to practise as such; and it was further provided that no person should be admitted to any such examination until he had attained the full age of twenty-one years, and had served an apprenticeship of not less than five years to an apothecary, and produced to the court of examiners satisfactory testimonials of a sufficient medical education, and of good moral conduct.<sup>1</sup> By the same Act it was declared that any person (except such as were then actually practising as such) who should, after August 1st, 1815, act or practise as an apothecary, in any part of England or Wales, without having obtained the necessary certificate, should be liable to a penalty of £20 for every such offence,<sup>2</sup> and that no apothecary should be allowed to recover any charges claimed by him in any court of law, unless he should prove on the trial that he was in practice as an apothecary prior to, or on August 1st, 1815, or that he had obtained a certificate to practise as an apothecary from the master, wardens, and Society of Apothecaries.<sup>3</sup> It was expressly provided that nothing contained in the Act should affect chemists and druggists.<sup>4</sup>

By an Act passed in 1825,<sup>5</sup> it was further provided<sup>6</sup> that every person who held, or theretofore had held, or thereafter should hold a commission or warrant as surgeon or assistant-surgeon in the navy, or as surgeon, or as assistant-surgeon, or apothecary in the army, or as surgeon or assistant-surgeon in the service of the East India Company, should be entitled to practise as an apothecary in any part of England or Wales, without being examined by, or obtaining a certificate from the Apothecaries' Society, and without being liable to any penalty; and that no such person should be obliged, in order to recover in a court of law any charges claimed by him as an apothecary, to prove that he was in practice as an apothecary on the first day of August, 1815, otherwise than as holding a commission or warrant as surgeon or assistant-surgeon in the navy, or as surgeon, or assistant-surgeon, or apothecary in the army, or as surgeon or assistant-surgeon in the service of the East India Company. This Act expired on the 1st of August,

<sup>1</sup> 55 Geo. III. c. 194, ss. 14 and 15.

<sup>3</sup> *Ib.* s. 21. See *post*, c. vi. s. 1, § 5.

<sup>5</sup> 6 Geo. IV. c. 133.

<sup>2</sup> *Ib.* s. 20.

<sup>4</sup> *Ib.* s. 28.

<sup>6</sup> *Ib.* s. 4.



1826,<sup>1</sup> but persons who, prior to that date, held any such warrant, were not deprived of these rights by the expiration of the Act.<sup>2</sup>

The law has always considered that an important part of an apothecary's duty consisted in faithfully compounding physicians' prescriptions; and in the Apothecaries' Act of 1815, occurs the following enactment:<sup>3</sup>—"Whereas it is the duty of every person using or exercising the art and mystery of an apothecary to prepare with exactness, and to dispense such medicines as may be directed for the sick by any physician, lawfully licensed to practise physic by the president and commonalty of the Faculty of Physic in London, or by either of the two universities of Oxford or Cambridge: Therefore, for the further protection, security, and benefit of his Majesty's subjects, and for the better regulation of the practice of physic throughout England and Wales, be it enacted, That if any person using or exercising the art and mystery of an apothecary, shall at any time knowingly, wilfully, and contumaciously refuse to make, mix, compound, prepare, give, apply, or administer, or any way to sell, set on sale, put forth, or put to sale to any person or persons whatever, any medicines, compound medicines, or medicinale compositions, or shall deliberately or negligently, falsely, unfaithfully, fraudulently, or unduly make, mix, compound, prepare, give, apply, or administer, or any way sell, set on sale, put forth, or put to sale to any person or persons whatever, any medicines, compound medicines, or medicinale compositions, as directed by any prescription, order, or receipt, signed with the initials, in his own handwriting, of any physician so lawfully licensed to practise physic, such person or persons so offending shall, upon complaint made, within twenty-one days, by such physician, and upon conviction of such offence before any of his Majesty's Justices of the Peace, unless such offender can show some satisfactory reason, excuse, or justification in this behalf, forfeit, for the first offence, the sum of five pounds, for the second offence, the sum of ten pounds, and for the third offence, he shall forfeit his certificate, and be rendered incapable in future of using or exercising the art and mystery of an apothecary, and be liable to the penalty inflicted by this Act upon all who practise as such without a certificate, in the same manner as if

<sup>1</sup> 6 Geo. IV. c. 133, s. 11.

<sup>2</sup> *Steavenson v. Oliver*, 8 M. and W. 234; 10 L. J. Ex. 338.

<sup>3</sup> 55 Geo. III. c. 194, s. 5.



such party, so convicted, had never been furnished with a certificate enabling him to practise as an apothecary; and such offender, so deprived of his certificate, shall be rendered and deemed incapable in future of receiving and holding any fresh certificate, unless the said party, so applying for a renewal of his certificate, shall faithfully promise and undertake, and give good and sufficient security, that he will not in future be guilty of the like offence."

## II. *The Licence.*

1. In order to obtain the licence of the society, it is necessary—

*a.* To pass a preliminary examination in arts, or to obtain a certificate in arts from any of the bodies whose certificate is recognised by the general council.

*b.* To serve an apprenticeship or pupilage, of not less than five years, to a qualified apothecary. (This period may include the time spent in attending lectures and hospital practice).

*c.* To be of the full age of twenty-one years, and to obtain testimonials of good moral conduct.

*d.* To attend the following lectures, and medical practice:—

First Year.—Winter session: Chemistry; Anatomy and Physiology; Dissections. Summer session: Botany, Materia Medica and Therapeutics; Practical Chemistry.

Second Year.—Winter session: Anatomy and Physiology, including Dissections and Demonstrations; Principles and Practice of Medicine; Clinical Medical Practice. Summer session: Midwifery, and Diseases of Women and Children, and Vaccination; Forensic Medicine, and Toxicology; Clinical Medical Practice.

Third Year.—Winter session: Principles and Practice of Medicine; Clinical Medical Lectures; Morbid Anatomy; Clinical Medical Practice.

The winter session must consist of not less than six, and the summer session of not less than three months.

*e.* To be examined at the class examinations instituted by the various lecturers and professors.

*f.* To serve the office of clinical clerk at a recognised hospital, during the period of six weeks, at least.

*g.* To pass two professional examinations, the one after the second winter session, and the other after the third winter session (the five years' pupilage being completed).

2. Licentiates of the society are entitled to be registered, and to practise in any part of her Majesty's dominions.<sup>1</sup>

### III. *Examination of Apothecaries' Assistants.*

1. No person may act as an assistant to any apothecary, in compounding or dispensing medicines, unless he was acting as assistant to an apothecary before August 1st, 1815, or unless he has actually served an apprenticeship of five years to an apothecary, or has undergone an examination by the Court of Examiners of the Apothecaries' Society, or the major part of them, or by five apothecaries, appointed by the master and wardens of the Society for such purpose, in some county in England or Wales, not being within a radius of thirty miles from the City of London, and has obtained a certificate of his qualification to act as such assistant, under a penalty of £5 for every such offence.<sup>2</sup>

2. The examination of candidates for such certificates comprises—Translating Physicians' Prescriptions, the British Pharmacopœia, Pharmacy, Materia Medica, and Pharmaceutical Chemistry.

## *Sec. IX.—The Apothecaries' Hall of Ireland.*

### I. *History of the Society.*

It appears, by civic documents still extant, that apothecaries formed part of the ancient "Fraternity of Barbers and Chirurgeons of the Guild of S. Mary Magdalene," in Ireland, originally incorporated by Henry II., and subsequently extended and confirmed by Elizabeth and James; that an attempt was made by the College of Physicians in Ireland, in 1695, shortly after it had obtained its charter, to restrain apothecaries and surgeons from practising physic, which proved unsuccessful; that in 1745 the apothecaries were separated from the barber-surgeons, and, by a statute of William III., erected into a distinct guild, called "The Guild of S. Luke," or "Worshipful Company of Apothecaries," and that this guild governed the profession in and about Dublin, established rates of charges for attendance, and refused "to ride the franchises," on the ground of their "medical attendances."

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A).

<sup>2</sup> 55 Geo. III. c. 194, ss. 17, 18, and 20.

Such was the condition of the profession when the existing company obtained their Act of Incorporation in 1791,<sup>1</sup> "for more effectually preserving the health of his Majesty's subjects, for erecting an Apothecaries' Hall in the City of Dublin, and regulating the profession of an apothecary throughout the kingdom of Ireland." By this it is enacted that from thenceforth there shall be, within the City of Dublin, and suburbs, and liberties thereof, one company or fraternity of judicious apothecaries, well skilled in compounding and preparing medicines, and that such company shall consist of a governor, a deputy-governor, thirteen directors, and the subscribers, but shall not at any time contain more than sixty members. Provision is made that no by-law for or concerning the composition of medicines shall be made without the approbation of the College of Physicians in Ireland. It is also enacted that no one shall open shop, or act as an apothecary, or be employed as apprentice, foreman, or shopman to an apothecary in Ireland, unless he has been examined by the company, and obtained from them the necessary certificate.

By virtue of this Act, the apothecary is the only person in Ireland who can, legally, keep a shop for the compounding and vending of medicines, and is the only practitioner in Ireland who can recover for medicines furnished on the prescriptions of others. He is also authorized, by this Act, to practise the art and mystery of an apothecary, as a medical practitioner.

## II. *The Licence.*

1. In order to obtain the licence of the company, it is necessary—
  - a.* To pass an examination in arts, previously to entering on professional study.
  - b.* To be at least twenty-one years of age, and to obtain a certificate of good moral character.
  - c.* To serve an apprenticeship to a qualified apothecary, or to be engaged at practical pharmacy, with an apothecary, for a period of three years, subsequently to having passed the examination in arts.
  - d.* To spend four years in professional study.
  - e.* To attend courses of lectures on chemistry, anatomy,

<sup>1</sup> 31 Geo. III. c. 34 (Irish).

and physiology, demonstrations and dissections, botany and natural history, materia medica and therapeutics, practical chemistry, principles and practice of medicine, midwifery, and diseases of women and children, surgery, and forensic medicine; to attend twenty midwifery cases at a recognised hospital; and to be instructed in the practice of vaccination.

*f.* To attend, at a recognised hospital or hospitals, the practice of medicine, and clinical lectures on medicine, during two winter and two summer sessions; also the practice of surgery, and clinical lectures on surgery, during one winter and one summer session.

*g.* To perform the operation of vaccination successfully, under a recognised vaccinator.

*h.* To pass two professional examinations, the one after two years, and the other after four years of professional study.

2. Doctors of medicine of any of the universities of the United Kingdom, or surgeons of any of the Royal Colleges of Surgeons, whose qualifications as such appear in the Medical Register, and who, having first passed an examination in arts, have also served an apprenticeship, or the required term at *practical* pharmacy, to a qualified apothecary, may obtain the licence of the Hall by undergoing an examination—the former in pharmacy, and the latter in medicine and pharmacy.

3. The licence of the Hall entitles its possessor to be registered, and to practise medicine and pharmacy in any part of her Majesty's dominions.<sup>1</sup> It is recognised as a full qualification in medicine, for appointments in the medical department of the army and navy, and under the Poor-law boards in England and in Ireland.

It is expressly provided in the Medical Act<sup>2</sup> that nothing therein contained shall in any way affect the rights, privileges, or employment of duly licensed apothecaries in Ireland, so far as the same extend to selling, compounding, or dispensing medicines.

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A).

<sup>2</sup> *Ib.* s. 55.



PART II.—UNIVERSITIES.

*Sec. I.—University of Oxford.*

The following degrees are conferred by this university :—

1. *Bachelor of Medicine (B.M.)*

In order to obtain this degree, it is necessary—

- a.* To be admitted a student of medicine (S.M.)
- b.* To reside for twelve terms, and to pass all the requisite examinations for the degree of B.A.
- c.* To complete eight terms from the date of obtaining the *testamur*, in one of the schools, at the second public examination for the degree of B.A., and to pass, at the expiration of such time, a preliminary medical examination.
- d.* To complete sixteen terms from the date of the same *testamur*, and two years from the date of the first medical examination, and to produce satisfactory certificates of attendance at some hospital of good repute.
- e.* To pass, at the expiration of such time, a second medical examination.

2. *Doctor of Medicine (D.M.)*

In order to obtain this degree, it is necessary—

- a.* To take the degree of B.M. in this university.
- b.* To complete three years from the date of admission to such degree.
- c.* To read publicly, within the precinct of the schools, in the presence of the regius professor, an original dissertation on some medical subject approved by the professor, and to deliver to him a copy of it.

Persons who have taken either of these degrees are entitled to be registered, and to practise medicine in any part of her Majesty's dominions.<sup>1</sup>

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A).

*Sec. II.—University of Cambridge.*

The following degrees are conferred by this university :—

1. *Bachelor of Medicine* (M.B.)

In order to obtain this degree, it is necessary—

- a.* To reside for nine terms.
- b.* To pass the previous examination, and an examination in algebra, if no degree in arts has been taken.
- c.* To spend five years in medical study, six terms of which must be spent in the university after passing the previous examination.<sup>1</sup>
- d.* To pass a first medical examination, after passing the previous examination, and attending at least one course of lectures on chemistry (including manipulations), and botany.
- e.* To pass a second medical examination, after having completed two years of medical study in the university since the first medical examination, and after having attended lectures on anatomy and physiology (human and comparative), materia medica, pharmacy, and pathology, and having practised dissection, during one season at least, and attended hospital practice during one year at least.
- f.* To pass a third medical examination, after having completed the course of medical study; and attended lectures on the principles and practice of physic, clinical medicine, clinical surgery, medical jurisprudence, and midwifery; and attended hospital practice during three years.
- g.* To read an original thesis, in English, on a subject approved by the regius professor, and to be subjected to a *virâ voce* examination on the subject of the thesis, and on other subjects in the faculty.

2. *Doctor of Medicine* (M.D.)

In order to obtain this degree, it is necessary—

- a.* To complete nine terms, after inauguration as M.B.; or, to complete twelve terms after taking the M.A. degree,

<sup>1</sup> Four years of study, only, are required from those who have taken honours, and in this case four terms so spent will suffice.

and to produce the same certificates of attendance on lectures and hospital practice, and to pass the same examination as is required for the M.B. degree.

*b.* To read an original thesis, and undergo an examination, as required for the M.B. degree, and to write a short extempore essay on a topic relating to physiology, pathology, practice of medicine, or state medicine.

### 3. *Master in Surgery (M.S.)*

In order to obtain this degree, it is necessary—

*a.* To reside for nine terms.

*b.* To pass all the examinations for the degree of M.B.

*c.* To attend a second course of lectures on human anatomy, one course on the principles and practice of surgery, lectures on clinical surgery during one year, ten cases of midwifery, and the surgical practice of a recognised hospital during three years; to practise dissection during a second season; and to be house-surgeon, or dresser of a recognised hospital, for six months, at least.

*d.* To pass the usual examination for the M.S. degree.

Persons who have taken any of these three degrees are entitled to be registered. Those who have taken the M.B. or M.D. degree may practise medicine; but those who have taken the M.S. degree may practise surgery only, unless registered also as M.B.<sup>1</sup>

### *Sec. III.—University of London.*

The following degrees are conferred by this university:—

#### 1. *Bachelor of Medicine (M.B.)*

In order to obtain this degree, it is necessary—

*a.* To pass a matriculation examination at this university, or to take a degree in arts in either of the universities of Sydney, Melbourne, or Calcutta (provided, in the last case, that Latin must be one of the subjects in which the graduate passes).

*b.* To pass a preliminary scientific examination, at this university.

*c.* To engage in professional studies during four years,

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A).

subsequently to matriculation, or graduation in arts, at one or more of the medical institutions or schools recognised by the university; one year, at least, of the four to be spent in one or more of the recognised institutions or schools in the United Kingdom.

*d.* To pass two examinations in medicine, at this university.

Various modifications of these rules are made in favour of those who commenced their medical studies in or before January, 1839, and in favour of those who, prior to 1840, were members of one of the legally-constituted bodies, in the United Kingdom, for licensing practitioners in medicine or surgery, or, who served, previously to 1840, as surgeons or assistant-surgeons in her Majesty's army, ordnance, or navy, or in the service of the Honourable East India Company.

## 2. *Bachelor of Surgery (B.S.)*

In order to obtain this degree, it is necessary—

- a.* To take the degree of M.B. in this university.
- b.* To attend a course of instruction in operative surgery, and to operate on the dead subject.
- c.* To pass the examination, at this university, for the B.S. degree.

## 3. *Master in Surgery (M.S.)*

In order to obtain this degree, it is necessary—

- a.* To take the degree of B.S. in this university, or to have obtained the degree of M.B., in this university, previously to 1866.
- b.* To attend, subsequently to having taken such degree—
  - 1. To clinical or practical surgery, during two years, in a hospital or medical institution recognised by this university.
  - 2. Or, to clinical or practical surgery, during one year, in a hospital or medical institution recognised by this university, and to be engaged, during three years, in the practice of the profession. Or,
- c.* To be engaged, during five years, in the practice of the profession.
- d.* To produce a certificate of moral character, signed by two persons of respectability.



*c.* To pass the necessary examination, at this university, for the M.S. degree.

#### 4. *Doctor of Medicine (M.D.)*

In order to obtain this degree, it is necessary—

*a.* To take the degree of M.B. in this university.

*b.* To attend, subsequently to having taken such degree—

1. To clinical or practical medicine, during two years, in a hospital or medical institution recognised by this university.

2. Or, to clinical or practical medicine, during one year, in a hospital or medical institution recognised by this university, and to be engaged, during three years, in the practice of the profession. Or,

*c.* To be engaged, during five years, in the practice of the profession.

*d.* To produce a certificate of moral character, signed by two persons of respectability.

*e.* To pass the necessary examination, at this university, for the M.D. degree.

Practitioners in medicine or surgery, who obtained their licences or commissions prior to 1840, are admitted to the M.D. examination, if they have been engaged, during five years, in the practice of their profession, and have taken the degree of M.B. at this university.

Bachelors and doctors of medicine of this university are entitled to be registered, and, without the necessity of undergoing any further examination, or obtaining any further authority or licence, may practise physic as fully, effectually, and extensively, in all respects, as any bachelor of medicine, or doctor of medicine, of either of the universities of Oxford and Cambridge, but they are not entitled to practise surgery, pharmacy, or midwifery.<sup>1</sup> A bachelor of surgery is not, as such, entitled to be registered, but, as he must have taken the M.B. degree, he may claim to be registered with respect to the latter qualification. A master in surgery is entitled to be registered, and to practise surgery in any part of her Majesty's dominions; and, if he have his qualification as M.B. inserted in the register, he is entitled to practise both medicine and surgery.<sup>2</sup>

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 15, 31, 53, and Sch. (A); 17 & 18 Vict. c. 114, s. 1.

<sup>2</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A).

*Sec. IV.—University of Durham.*

The following licences and degrees are granted by this university :—

1. *Licence in Medicine.*

In order to obtain this, it is necessary—

*a.* To pass a matriculation examination, and be registered as a medical student at this university.

*b.* To spend, after registration, four years in medical study, at one or more of the schools recognised by the licensing bodies named in Schedule (A) of the Medical Act, 1858.

*c.* To produce certificates of good moral conduct, of having attained the age of twenty-one years, and of attendance on lectures and hospital practice.

*d.* To pass two examinations—the one after two years, and the other after four years of medical study, as above.

2. *Licence in Surgery.*

The regulations under which this may be obtained are the same as those for the licence in medicine, given above.

The second examination for a licence in surgery may, or may not, be passed at the same time as the second examination for a licence in medicine.

3. *Bachelor in Medicine (M.B.)*

In order to obtain this degree, it is necessary—

*a.* To be of the standing of three terms, at least, as a licentiate in medicine, and of eighteen terms (six years), at least, from the date of registration or matriculation.

*b.* To take the degree of B.A. at this university, or to reside for three terms at Durham or Newcastle, and pass the final examination for the B.A. degree, or one equivalent thereto.

*c.* To spend one year, at least, in medical study, at some school of medicine in connection with the university.

*d.* To write an essay on some subject approved by the reader in medicine, and pass an examination thereon, in-

cluding the collateral medical sciences involved in the subject of the essay.

*e.* To pass the usual examination for the M.B. degree.

#### 4. *Doctor in Medicine* (M.D.)

In order to obtain this degree, it is necessary—

*a.* To be of the standing of three terms, at least, as M.B. of this university, and of the standing of twenty-one terms (seven years), at least, from the date of registration or matriculation.

*b.* To pass the usual examination for the M.D. degree.

#### 5. *Master in Surgery* (M.S.)

In order to obtain this degree, it is necessary—

*a.* To be a licentiate in surgery, and also in medicine, of this university.

*b.* To be of the standing of three terms, at least, from the date of admission to the licence in surgery, and of eighteen terms (six years), at least, from the date of registration or matriculation.

*c.* To take the degree of B.A. at this university, or to reside for three terms at Durham or Newcastle, and pass the final examination for the B.A. degree, or one equivalent thereto.

*d.* To spend one year, at least, in medical and surgical study, in some school of medicine in connection with the university.

*e.* To pass the usual examination for the M.S. degree.

Persons who have taken the M.B. or M.D. degree, or have obtained a licence in medicine, at this university, are entitled to be registered, and to practise medicine, and persons who have taken the M.S. degree, to be registered, and practise surgery, in any part of her Majesty's dominions.<sup>1</sup>

### *Sec. V.—University of Edinburgh.*

The following degrees are conferred by this university :—

#### 1. *Bachelor of Medicine* (M.B.)

In order to obtain this degree, it is necessary—

*a.* To be registered as a medical student, according to the regulations of the General Medical Council.

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A).

b. To pass a preliminary extra-professional examination, or to take a degree in arts at any of the universities of the United Kingdom, or at any colonial or foreign university specially recognised by the University Court.

c. To be engaged in medical and surgical study for four years, one of which must be in this university, and another of which must be either in this university, or in some other university entitled to give the degree of doctor of medicine. [The medical session of each year, or *annus medicus*, is constituted by two courses, of not less than 100 lectures each, or by one such course, and two courses of not less than fifty lectures each. Attendance during at least six winter months, on the medical or surgical practice of a general hospital, which accommodates at least eighty patients, and, during the same period, on a course of practical anatomy, will, however, be reckoned as one such *annus medicus*. One or two of the *anni medici* may be taken at qualified extra-academical schools.]

d. To give sufficient evidence, by certificates, of having studied each of the following departments of medical science, viz.:—Anatomy, Chemistry, Materia Medica, Institutes of Medicine or Physiology, Practice of Medicine, Surgery, Midwifery, and the diseases peculiar to women and children (two courses of midwifery, of three months each, being reckoned equivalent to a six months' course, provided different departments of obstetric medicine be taught in each of the courses), General Pathology (or, in schools where there is no such course, a three months' course of lectures on Morbid Anatomy, together with a supplemental course of practice of medicine, or clinical medicine), during courses including not less than one hundred lectures; Practical Anatomy, a course of the same duration as those of not less than one hundred lectures, above prescribed; Practical Chemistry, three months; Practical Midwifery, three months at a midwifery hospital, or a certificate of attendance on six cases, from a registered medical practitioner; Clinical Medicine, Clinical Surgery, courses of the same duration as those of not less than one hundred lectures, above prescribed, or two courses of three months, lectures being given at least twice a week; Medical Jurisprudence, Botany, Natural History, including Zoology, during courses including not less than fifty lectures.



*e.* To attend, for at least two years, the medical and surgical practice of a general hospital which accommodates not fewer than eighty patients, and possesses a distinct staff of physicians and surgeons.

*f.* To be engaged, for at least three months, by apprenticeship or otherwise, in compounding and dispensing drugs at the laboratory of a hospital, dispensary, member of a surgical college or Faculty, licentiate of the London or Dublin Society of Apothecaries, or a member of the Pharmaceutical Society of Great Britain.

*g.* To attend, for at least six months, by apprenticeship or otherwise, the out-practice of a hospital, or the practice of a dispensary, physician, surgeon, or member of the London or Dublin Society of Apothecaries.

*h.* To be practically instructed in the operation of vaccination, and to be acquainted with the appearances which follow its performance, and to obtain a certificate to the above effect from a dispensary, or other public institution where vaccination is practised.

*i.* To be of the age of twenty-one years, at least, on the day of graduation.

*j.* Not to be under articles of apprenticeship to any surgeon, or other master, on the day of graduation.

*k.* To pass the usual examination, at this university, for the M.B. degree. [The subjects of this examination are arranged in divisions, and students may pass their examination in some of these divisions, at certain periods during their four years' course of medical and surgical study, or may defer examination in the whole until the completion of such course.]

Certain modifications of these rules are made in favour of those who commenced their medical studies before February 4th, 1861.

## 2. *Master in Surgery (C.M.)*

In order to obtain this degree, it is necessary to pass through precisely the same course of study, &c., as for the M.B. degree; but this degree is not conferred on any person who does not also, at the same time, obtain the degree of bachelor of medicine.

3. *Doctor of Medicine (M.D.)*

In order to obtain this degree, it is necessary—

- a.* To be of the age of twenty-four years.
- b.* To obtain the degree of M.B. at this university.
- c.* To be engaged, subsequently to taking such degree, for at least two years, in attendance on a hospital, or in the military or naval medical services, or in medical and surgical practice.
- d.* To be a graduate in arts of one of the universities of the United Kingdom, or of any other university specially recognised by the University Court, or, before or at the time of obtaining the M.B. degree, or within three years thereafter, to pass a satisfactory examination in Greek, and in logic or moral philosophy, and in one at least of the following subjects, viz.:—French, German, higher mathematics, natural philosophy, and natural history.
- e.* To submit to the medical Faculty an original thesis, to be approved by the Faculty, on any branch of knowledge comprised in the professional examinations for the M.B. degree.

Certain modifications in these rules are made in favour of those who commenced their medical studies before February 4th, 1861.

In all the Scotch universities, viz., the University of Edinburgh, the University of Glasgow, the University of Aberdeen, and the University of St. Andrew's, the regulations for granting medical degrees are framed in conformity with an ordinance of the Universities' (Scotland) Commissioners, dated March 16th, 1861, and approved by her Majesty in Council. The same medical degrees are granted by each university, and the rules and regulations under which such degrees are conferred are, in every case, very nearly the same as those given above for the University of Edinburgh.

Persons who have taken the degree of M.B. or M.D. at any of the Scotch universities are entitled to be registered, and to practise medicine, and persons who have taken the degree of C.M., and, therefore, necessarily, of M.B. also, are entitled to be registered for both qualifications, and to practise medicine and surgery in any part of her Majesty's dominions.<sup>1</sup>

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A).

Any single university in Scotland can now qualify candidates for the military service, as well as for any other public medical service in the country.

*Sec. VI.—University of Glasgow.*

The following degrees are conferred by this university:—

1. *Bachelor of Medicine* (M.B.)
2. *Master in Surgery* (C.M.)
3. *Doctor of Medicine* (M.D.)

The regulations under which these degrees are granted are very nearly the same as those, under which the like degrees are conferred in the University of Edinburgh.<sup>1</sup>

Modifications in such regulations are made in favour of those who commenced their medical course before November, 1861.

*Sec. VII.—University of Aberdeen.*

The following degrees are conferred by this university:—

1. *Bachelor of Medicine* (M.B.)
2. *Master in Surgery* (C.M.)
3. *Doctor of Medicine* (M.D.)

The regulations under which these degrees are granted are very nearly the same as those, under which the like degrees are conferred in the University of Edinburgh.<sup>2</sup>

Modifications in such regulations are made in favour of those who commenced their medical studies before the first Tuesday in November, 1861.

<sup>1</sup> See p. 87.

<sup>2</sup> See p. 87.

*Sec. VIII.—University of St. Andrew's.*

The following degrees are conferred by this university :—

1. *Bachelor of Medicine* (M.B.)
2. *Master in Surgery* (C.M.)
3. *Doctor of Medicine* (M.D.)

The regulations under which these degrees are granted are very nearly the same as those, under which the like degrees are conferred in the University of Edinburgh.<sup>1</sup>

Two of the four years of medical and surgical study, required from candidates for the M.B. or C.M. degree, must have been spent in one or more of the following universities or colleges, viz., the Universities of St. Andrew's, Glasgow, Aberdeen, Edinburgh, Oxford, or Cambridge, Trinity College, Dublin, Queen's College, Belfast, Queen's College, Cork, or Queen's College, Galway.

The degree of M.D. may be conferred by this university on any registered medical practitioner above the age of forty years, whose professional position and experience are such as, in the estimation of the university, to entitle him to that degree, and who shall, on examination, satisfy the medical examiners of the sufficiency of his professional knowledge. Not more than ten degrees may, however, be conferred, under this regulation, in any one year.

*Sec. IX.—University of Dublin.*

The following degrees and licences are granted by this university :—

1. *Bachelor of Medicine* (M.B.)

In order to obtain this degree, it is necessary—

- a. To be matriculated as a student of the school of physie.
- b. To take a degree in arts at this university. [The M.B.

<sup>1</sup> See p. 87.



degree may be taken at the same time as the B.A. degree, or at any subsequent commencement.]

*c.* To spend four years in medical study, after matriculation, one of which must be in the school of physic.

*d.* To attend, during such period of four years, courses of lectures on anatomy, practical anatomy, with dissections, surgery, chemistry, materia medica and pharmacy, institutes of medicine, practice of medicine, midwifery, botany, practical chemistry, and medical jurisprudence. [Any of these courses may be attended at any recognised medical school in Dublin, and three of them in the University of Edinburgh, provided that the last-mentioned regulation be complied with.]

*e.* To attend, during two years, the clinical lectures of any recognised hospital, and to practise midwifery for not less than six months.

*f.* To pass two examinations—the one after two years, and the other after four years of medical study.

## 2. *Licence in Medicine.*

*a.* The regulations under which this licence may be obtained are the same as those for the M.B. degree, except that it is not necessary to take a degree in arts.

*b.* A licentiate in medicine, on completing his course in arts, and taking the B.A. degree, may be admitted to the M.B. degree without further examination in medicine.

## 3. *Doctor in Medicine (M.D.)*

In order to obtain this degree, it is necessary—

*a.* To be of, at least, three years' standing as M.B., or to have been qualified to take the degree of M.B. for three years.

*b.* To read publicly, before the regius professor of physic, two original theses on medical subjects.

## 4. *Master in Surgery (Ch.M.)*

In order to obtain this degree, it is necessary—

*a.* To be matriculated as a student of the school of physic.

*b.* To take the B.A. degree at this university.

*c.* To spend four years in the study of surgery and anatomy, one of which must be in the school of physic.

*d.* To attend, during such period of four years, courses of lectures on anatomy, demonstrations, dissections, theory and practice of surgery, practice of medicine, chemistry, materia medica, midwifery, practical chemistry, botany, and medical jurisprudence. [Any of these courses may be attended at any of the recognised medical schools of Dublin, provided that the last-mentioned regulation be complied with.]

*e.* To attend for three sessions, of nine months each, the practice of any of certain recognised hospitals, and to attend the clinical lectures on medicine and surgery there delivered.

*f.* To attend, for one session of nine months' duration, a hospital having at least twenty beds for cases of fever.

*g.* To pass two examinations—the one after two years, and the other after four years of surgical study.

#### 5. *Licence in Surgery.*

In order to obtain this, it is necessary to be a student of the senior freshman, or some higher class. The other regulations are the same as for the degree of Ch.M., except that it is not necessary to comply with those lettered (*b*) and (*f*).

Persons who have taken the M.B. or M.D. degree, or have obtained the Licence in Medicine, are entitled to be registered, and to practise medicine, and persons who have taken the Ch.M. degree, or have obtained the Licence in Surgery, are entitled to be registered, and to practise surgery, in any part of her Majesty's dominions.<sup>1</sup>

#### *Sec. X.—Queen's University, Ireland.*

The following degrees are granted by this university:—

1. *Doctor in Medicine* (M.D.)
2. *Master in Surgery* (M.S.)

This university includes three colleges, viz., the Queen's Colleges of Belfast, Cork, and Galway, each of which possesses a Faculty of Medicine. The curriculum of medical study extends

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A); 23 Vict. c. 7, s. 1.

over a period of four years, and is divided into two periods of two years each.

The first period comprises attendance on Chemistry, Natural History, Anatomy and Physiology, Practical Anatomy, Materia Medica and Pharmacy. The second period comprises attendance on Anatomy and Physiology, Practical Anatomy, Theory and Practice of Surgery, Midwifery and Diseases of Women and Children, Theory and Practice of Medicine, and Medical Jurisprudence.

At least two of the above courses of lectures must be attended in some one of the Queen's Colleges; the remainder may be taken, at the option of the candidate, in any university, college, or school, recognised by the senate of the Queen's University.

Candidates are required, before graduating, to have also attended, in one of the colleges of the Queen's University, lectures on Experimental Physics, and on one modern language, and to have passed the matriculation examination.

They are, further, required to attend, during the first period, Practical Chemistry in a recognised laboratory, and the practice, during six months, of a recognised medico-chirurgical hospital, containing at least sixty beds, together with clinical lectures delivered therein; during the second period, at a recognised midwifery hospital, with the clinical lectures therein delivered, for a period of three months; or a midwifery dispensary for the same period; or ten cases of labour, under the superintendence of the medical officer of any hospital or dispensary where cases of labour are treated; and eighteen months' practice of a recognised medico-chirurgical hospital, containing at least sixty beds, and in which clinical instruction is delivered.

There are two university examinations—one comprising the subjects of study in the first period, the other the subjects of the second period.

Persons who have taken the M.D. degree are entitled to be registered, and to practise medicine, and persons who have taken the M.S. degree, to be registered, and to practise surgery, in any part of her Majesty's dominions.<sup>1</sup>

<sup>1</sup> 21 & 22 Vict. c. 90, ss. 15, 31, and Sch. (A).

## CHAPTER IV.

### REGISTRATION OF PHARMACEUTICAL CHEMISTS, AND CHEMISTS AND DRUGGISTS.

#### I. *Necessity for Registration.*

1. Any person, not being duly registered as a pharmaceutical chemist, who assumes, uses, or exhibits the title of pharmaceutical chemist, or pharmaceutist, or pharmacist, in any part of Great Britain, or who assumes, uses, or exhibits, any name, title, or sign, implying that he is so registered, or that he is a member of the Pharmaceutical Society, is liable, for every such offence, to a penalty of £5, which may be recovered by the registrar appointed by the Pharmaceutical Society, in the name and by the authority of the council of the said society.<sup>1</sup>

No action can, however, be brought to recover such penalty after the expiration of six months from the commission of the offence. The winning side is entitled to costs.<sup>2</sup>

2. Any person, not being duly registered as a pharmaceutical chemist, or as a chemist and druggist, who takes, uses, or exhibits the name or title of chemist and druggist, or chemist, or druggist, or who sells or keeps an open shop for the retailing, dispensing, or compounding of poisons,<sup>3</sup> is liable to a like penalty, which may be recovered in a similar manner.<sup>4</sup>

3. All registered pharmaceutical chemists are freed and exempted from being returned, and from serving upon any juries or inquests whatsoever.<sup>5</sup>

#### II. *The Pharmaceutical Society.*

The Pharmaceutical Society of Great Britain was established

<sup>1</sup> 15 & 16 Vict. c. 56, s. 12; 31 & 32 Vict. c. 121, s. 15.

<sup>2</sup> 15 & 16 Vict. c. 56, s. 13.

<sup>3</sup> See *post*, "Sale of Poisons," c. vii., sec. 8.

<sup>4</sup> 31 & 32 Vict. c. 121, s. 15. See also *post*, "Recovery of Charges," c. vi., sec. 1.

<sup>5</sup> 25 & 26 Vict. c. 107, s. 2; 33 & 34 Vict. c. 77, Sch.



in 1841, "for the purpose of advancing chemistry and pharmacy, and promoting an uniform system of education for those who should practise the same, and also for the protection of those carrying on the business of chemists and druggists."

On the 18th of February, 1843, the society was incorporated by royal charter, whereby it was provided, that the society should consist of members, who should be chemists and druggists, who were, or had been, established on their own account at that date, or who should have been examined in such manner as the council of the society should deem proper, or who should have been certified to be duly qualified for admission, or who should be persons elected as superintendents by the council of the society; and that there should be admitted to the privileges and benefits of the society, after having been examined and certified as qualified by the council, certain persons, to be called associates, who should be assistants to chemists and druggists; and also apprentices or students in pharmacy and chemistry. The government of the society was, however, by the charter, vested in the members alone.

Power was also given to appoint examiners to examine and decide upon the admission or rejection of members, associates, apprentices, or students; to grant certificates or diplomas; and to make by-laws for regulating the affairs of the society, and the examination, election, and removal of members, associates, apprentices, and students.

This charter was confirmed by the Pharmacy Act, 1852,<sup>1</sup> and it was further provided thereby, that the council of the society should have power to alter and amend the by-laws, for the purposes contemplated by their charter, or the Pharmacy Act, 1852, provided they should be confirmed and approved by a special general meeting of the members of the society, and by the Privy Council;<sup>2</sup> and that every person duly registered as a pharmaceutical chemist should be eligible to be elected as a member of the society, and that every person duly registered as an assistant should be eligible for admission as an associate of the society, and that every person duly registered as a student or apprentice to a pharmaceutical chemist should be eligible for admission into the society, according to the by-laws thereof.<sup>3</sup>

<sup>1</sup> 15 & 16 Vict. c. 56.

<sup>2</sup> *Ib.* s. 2. See also 31 & 32 Vict. c. 121, s. 25.

<sup>3</sup> 15 & 16 Vict. c. 56, s. 10.

By the Pharmacy Act, 1868,<sup>1</sup> it was enacted that every person who, on the 31st day of July, 1868, was, or had been in business, on his own account, as a chemist and druggist, and who had been duly registered as a chemist and druggist, should be eligible to be elected and continue a member of the society, according to the by-laws thereof, but that such person should not be entitled, in right of membership so acquired, to be placed on the register of pharmaceutical chemists.

It was declared, however, that such a member should be eligible for election to the council of the society, but that the council might not at any time contain more than seven members who were not on the register of pharmaceutical chemists.<sup>2</sup>

It was also further provided that every person who had been registered as a chemist and druggist, by reason of having obtained a certificate of qualification from the board of examiners appointed by the society, should be eligible to be elected an associate of the society, and that every such person so elected, and continuing as such associate, being in business on his own account, should be entitled to the privilege of attending all meetings of the society, and of voting thereat, and otherwise taking part in the proceedings of such meetings, in the same manner as members of the society. Such associates must, however, contribute to the funds of the society the same fees or subscriptions as are contributed by members for the time being, under the by-laws thereof.<sup>3</sup>

*Members* must have joined the society before 1853; or have passed the preliminary, minor, and major examinations, and been registered as pharmaceutical chemists; or been placed on the register as chemists and druggists, by reason of having been in business on their own account prior to August 1st, 1868.

*Associates* must have passed the preliminary and minor examinations, or, having been employed as assistants before the passing of the Pharmacy Act, 1868, the modified examination. Associates in business on their own account enjoy the same privileges of the society as members, except the right of holding office. Associates not in business may not hold office, and are not entitled to be present at the annual or general meetings.

*Registered Apprentices* must have passed the preliminary examination. They enjoy the same privileges of the society as associates not in business.

<sup>1</sup> 31 & 32 Vict. c. 121, s. 18.

<sup>2</sup> *Ib.* s. 19.

<sup>3</sup> *Ib.* s. 20.

Registers of pharmaceutical chemists, and of chemists and druggists are published annually, but it is optional with both classes whether they become members of the society, or not.

Persons who are desirous of being registered as pharmaceutical chemists, and are not otherwise qualified, must pass the preliminary, minor, and major examinations.

Persons who are desirous of being registered as chemists and druggists, and are not otherwise qualified, must pass the preliminary and minor examinations.

*The Preliminary Examination* comprises Latin, English grammar and composition, and arithmetic.

*The Minor Examination* comprises prescriptions, practical dispensing, pharmacy, materia medica, botany, and chemistry.

*The Major Examination* comprises prescriptions and posology, practical dispensing, pharmacy, materia medica, botany, chemistry, and the elements of light, heat, electricity, and magnetism.

*The Modified Examination* comprises prescriptions, practical dispensing, materia medica and quality of specimens, and pharmacy.

The examiners are appointed by the council of the society. One board of examiners is appointed for England and Wales, and another for Scotland. The appointments must be approved of by the Privy Council, and any officer appointed by the Privy Council may be present during the progress of any examination.<sup>1</sup>

### III. *Registration.*

1. A registrar is appointed by the council of the Pharmaceutical Society. The council have power to remove the registrar, and, from time to time, to appoint a new registrar in the room of any registrar who may die, or retire, or be removed from office, as aforesaid.<sup>2</sup>

2. It is the duty of the registrar to make out, from time to time, and to maintain, a complete register of all persons being members of the Pharmaceutical Society, and also of all persons being associates, and apprentices or students, respectively, according to the terms of the charter of incorporation, and to keep a proper index of the register.<sup>3</sup>

3. The registrar is bound, on the application of any person

<sup>1</sup> See 15 & 16 Vict. c. 56, ss. 8 & 9; 31 & 32 Vict. c. 121, s. 6.

<sup>2</sup> 15 & 16 Vict. c. 56, s. 4; 31 & 32 Vict. c. 121, s. 8.

<sup>3</sup> 15 & 16 Vict. c. 56, s. 5.



paying one shilling, to certify under his hand whether or no any person, whose name and address may be furnished to him, appears in the said register, or is a member of the Pharmaceutical Society, or not.<sup>1</sup>

4. The certificate of the registrar, signed by him, and countersigned by the president, or two members of the council of the society is, in the absence of evidence to the contrary, sufficient evidence of the facts therein stated, up to the date of the said certificate.<sup>2</sup>

5. Any registrar who wilfully makes, or causes to be made, any falsification in any matters relating to any register or certificate, will be deemed guilty of a misdemeanor.<sup>3</sup>

6. The registrar is also bound to make and keep, and, in the month of January in every year, to cause to be printed, published, and sold, a correct register of the names of all pharmaceutical chemists, and a correct register of all persons registered as chemists and druggists, whose names appeared on the register of pharmaceutical chemists, and on the register of chemists and druggists, on the 31st day of December last preceding.<sup>4</sup>

7. These registers are to be called "The Registers of Pharmaceutical Chemists, and Chemists and Druggists." The names must be in alphabetical order, according to the surnames, with the respective residences, and the following or a like form must be employed.<sup>5</sup>

NAME.	RESIDENCE.	QUALIFICATION.
A.B.	Oxford Street, London.	In business prior to Pharmacy Act, 1868.
C.D.	George Street, Edinburgh.	Examined and certified.
E.F.	Cheapside, London.	Assistant prior to Pharmacy Act, 1868.

8. A printed copy of such registers for the time being, purporting to be so printed and published as aforesaid, or any certificate under the hand of the registrar, and countersigned by the president, or two members of the council of the Pharmaceutical Society, is evidence in all courts, and before all justices of the peace and others, that the persons therein specified are duly

<sup>1</sup> 15 & 16 Vict. c. 56, s. 7.

<sup>2</sup> *Ib.* s. 7.

<sup>3</sup> *Ib.* s. 15.

<sup>4</sup> 31 & 32 Vict. c. 121, s. 13.

<sup>5</sup> *Ib.* and Sch. (B).



registered; and the absence of the name of any person from such printed register is evidence, until the contrary is made to appear, that such person is not duly registered.<sup>1</sup>

9. It is the duty of the registrar to erase from the registers the name of any person who has died, and to make the necessary alterations, from time to time, in the addresses of registered persons; and he may, at any time, send a registered letter to any registered person, addressed to him according to his address on the register, to inquire whether he has ceased to carry on business, or has changed his residence, and if no answer be returned to such letter within the period of six months from the sending of the letter, he may send a second of similar purport in like manner, and if no answer be given thereto within three months from the date thereof, he may erase the name of such person from the register. The name of such person may, however, be restored by direction of the council of the Pharmaceutical Society, should they think fit to make an order to that effect.<sup>2</sup>

10. Every registrar of deaths in Great Britain is bound, on receiving notice of the death of any pharmaceutical chemist, or chemist and druggist, to transmit, forthwith, by post, to the registrar under the Pharmacy Acts, a certificate, under his own hand, of such death, with the particulars of the time and place of death; and the registrar under the Pharmacy Acts must, on the receipt of such certificate, erase the name of such deceased pharmaceutical chemist, or chemist and druggist, from the register.<sup>3</sup>

11. The registrar may not enter in the registers the name of any person, unless he is satisfied, by the proper evidence, that the person claiming is entitled to be registered. An appeal lies from the decision of the registrar to the council of the Pharmaceutical Society. Any entry which may be proved, to the satisfaction of the council, to have been fraudulently or incorrectly made, may be erased from, or amended in the registers, by order in writing of such council.<sup>4</sup>

12. Any registrar who wilfully makes, or causes to be made, any falsification in any matter relating to these registers, will be deemed guilty of a misdemeanor in England, and in Scotland, of a crime or offence punishable by fine or imprisonment, and may,

<sup>1</sup> 31 & 32 Vict. c. 121, s. 13.

<sup>2</sup> *Ib.* s. 10.

<sup>3</sup> *Ib.* s. 11.

<sup>4</sup> *Ib.* s. 12.

on conviction thereof, be sentenced to be imprisoned for any term not exceeding twelve months.<sup>1</sup>

#### IV. *Who are entitled to be Registered.*

1. All persons who, on June 30th, 1852, were members, associates, apprentices, or students of the Pharmaceutical Society, according to the terms of its charter of incorporation, are entitled to be registered as pharmaceutical chemists, assistants, and apprentices, or students, respectively.<sup>2</sup>

2. All persons who have been examined by the persons duly appointed for the purpose by the Pharmaceutical Society, and have obtained from them certificates of qualification to exercise the business or calling of pharmaceutical chemists, or to be engaged or employed as students, apprentices, or assistants, are entitled, upon payment of the fees fixed by the by-laws of the said society, to be registered as pharmaceutical chemists, students, apprentices, or assistants, respectively.<sup>3</sup>

3. Those persons who, either before February 18th, 1843 (the date of the charter of the Pharmaceutical Society), or, after that date, and before June 30th, 1852 (the date of the Pharmacy Act), were in business, on their own account, as chemists and druggists, and, upon a certificate of such fact, and of their qualification to be admitted members of the society, were, according to the by-laws passed before the charter, and after the Act, elected members of the society, are entitled to be registered as pharmaceutical chemists, although they may not have passed the required examination, and although they were not members of the society before the passing of the Act.<sup>4</sup>

4. Persons who, on July 31st, 1868, had been duly admitted pharmaceutical chemists, are entitled to be registered under the Pharmacy Act, 1868, without paying any fee.<sup>5</sup>

5. Every person who, on or before July 31st, 1868, carried on, in Great Britain, the business of a chemist and druggist, in the keeping of open shop for the compounding of the prescriptions of duly qualified medical practitioners, is entitled to be registered as a chemist and druggist, upon payment of the proper fee, and upon

<sup>1</sup> 31 & 32 Vict. c. 121, s. 14.    <sup>2</sup> 15 & 16 Vict. c. 56, s. 6.    <sup>3</sup> *Id.* s. 10, and see p. 99.

<sup>4</sup> *Reg. v. The Registrar of the Pharmaceutical Society, &c.*, 5 E. and B. 138; 24 L. J. Q. B. 177.

<sup>5</sup> 31 & 32 Vict. c. 121, s. 5.

sending in a written claim to the registrar, accompanied by the following certificates :<sup>1</sup>—

## I.

*To the Registrar of the Pharmaceutical Society of Great Britain.*

I, \_\_\_\_\_, residing at \_\_\_\_\_, in the  
county of \_\_\_\_\_, hereby declare that I was in business  
as a chemist and druggist, in the keeping of open shop for the  
compounding of the prescriptions of duly qualified medical  
practitioners, at \_\_\_\_\_, in the county of \_\_\_\_\_,  
on or before the \_\_\_\_\_ day of \_\_\_\_\_,  
(Signed) \_\_\_\_\_ [ *Name.* ]  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

## II.

*To the Registrar of the Pharmaceutical Society of Great Britain.*

I, \_\_\_\_\_, residing at \_\_\_\_\_, in the  
county of \_\_\_\_\_, hereby declare that I am a duly  
qualified medical practitioner [*or* magistrate], and that, to  
my knowledge, \_\_\_\_\_, residing at \_\_\_\_\_,  
in the county of \_\_\_\_\_, was in business as a chemist  
and druggist, in the keeping of open shop for the compound-  
ing of the prescriptions of duly qualified medical practitioners,  
before the \_\_\_\_\_ day of \_\_\_\_\_, 186 \_\_\_\_.  
(Signed) \_\_\_\_\_ [ *Name.* ]

6. All persons who were of full age on July 31st, 1868, and had been engaged for three years, at least, as assistants in dispensing and compounding prescriptions, were entitled to be registered as chemists and druggists, upon producing certain certificates to the registrar, before December 31st, 1869, and passing a modified examination.<sup>2</sup>

7. All persons who have been examined by the examiners duly appointed for the purpose by the Pharmaceutical Society, and have received from them certificates of competent skill and knowledge and qualification, are entitled to be registered as chemists and druggists.<sup>3</sup>

<sup>1</sup> 31 & 32 Vict. c. 121, ss. 3, 5, and Schs. (C) and (D).

<sup>2</sup> 31 & 32 Vict. c. 121, s. 4 and Sch. (E); 32 & 33 Vict. c. 117, s. 2, and Sch. (A).

<sup>3</sup> 31 & 32 Vict. c. 121, s. 6, and see p. 99.

### V. *Miscellaneous Provisions.*

1. No person who is a member of the medical profession, or who is practising under right of a degree of any university, or under a diploma or licence of a medical or surgical corporate body, is entitled to be registered under the Pharmacy Act,<sup>1</sup> and the name of any pharmaceutical chemist who obtains such diploma or licence will be expunged from the register of pharmaceutical chemists, during the time he is engaged in practice as aforesaid.<sup>2</sup>

2. Upon the decease of any pharmaceutical chemist, or chemist and druggist, actually in business at the time of his death, any executor, administrator, or trustee of the estate of such pharmaceutical chemist, or chemist and druggist, may continue such business if, and so long only as, such business is *bonâ fide* conducted by a duly qualified assistant—*i.e.*, a person who is duly registered as a pharmaceutical chemist, or as a chemist and druggist.<sup>3</sup>

3. Registration as a chemist and druggist does not entitle any person so registered to practise medicine or surgery, or any branch of medicine or surgery.<sup>4</sup>

4. Any person wilfully procuring, by any false or fraudulent means, a certificate purporting to be a certificate of registration as a pharmaceutical chemist, assistant, apprentice, or student, or fraudulently exhibiting a certificate purporting to be a certificate of membership of the Pharmaceutical Society, is guilty of a misdemeanor.<sup>5</sup>

5. Any person wilfully procuring, or attempting to procure, himself to be registered, by making, or producing, or causing to be made or produced, any false or fraudulent representation or declaration, either verbally or in writing, and any person aiding or assisting him therein, will be deemed guilty of a misdemeanor, in England, and in Scotland, of a crime or offence punishable by fine or imprisonment, and may, on conviction thereof, be sentenced to be imprisoned for any term not exceeding twelve months.<sup>6</sup>

<sup>1</sup> 15 & 16 Vict. c. 56.

<sup>2</sup> *Ib.*, s. 11.

<sup>3</sup> 31 & 32 Vict. c. 121, s. 16.

<sup>4</sup> *Ib.*

<sup>5</sup> 15 & 16 Vict. c. 56, s. 16.

<sup>6</sup> 31 & 32 Vict. c. 121, s. 14.



## CHAPTER V.

### OFFICES HELD BY MEDICAL MEN.

#### *Sec. I.—Surgeon in the Army.*

##### *I. The Army Medical Service.*

The Army Medical Department is superintended by the Director-General, who acts under the orders of the Secretary for War, by whom the rates of pay are fixed.

##### *II. Qualifications of Candidates for Commissions.*

1. The candidate must be unmarried, and not under twenty-one, nor over twenty-eight years of age.

2. He must produce a certificate from the district registrar, in which the date of his birth is stated ; or, if this cannot be obtained, an affidavit from one of the parents, or other near relative, who can attest the date of birth, will be accepted.

3. He must produce a certificate of moral character, from the parochial minister, if possible.

4. He must make a declaration that he labours under no mental or constitutional disease, nor any imperfection or disability that can interfere with the most efficient discharge of the duties of a medical officer, in any climate.

5. He must attest his readiness to engage for general service, and to proceed on foreign service, when required to do so.

6. He must procure a recommendation from some person of standing in society, not a member of his own family, to the effect that he is of regular and steady habits, and likely, in every respect, to prove creditable to the department, if an appointment be granted him.

7. He must be registered under the Medical Act of 1858, as licensed to practise medicine and surgery in Great Britain and Ireland.

### III. *Examination of Candidates.*

#### *a. As to Physical Fitness.*

1. His physical fitness will be determined by a board of medical officers, who are required to certify that the candidate's vision is sufficiently good to enable him to perform any surgical operation without the aid of glasses. A moderate degree of myopia would not be considered a disqualification, provided that it did not necessitate the use of glasses during the performance of operations, and that no organic disease of the eyes existed.

2. He must also be free from organic disease of other organs, and from constitutional weakness, or other disability likely to unfit him for military service in any climate.

#### *b. In Special Subjects.*

1. Candidates will be examined by the Examining Board in the following subjects :—

Anatomy and physiology.

Surgery.

Medicine, including therapeutics, the diseases of women and children, chemistry and pharmacy, and a practical knowledge of drugs. (The examination in medicine and surgery will be in part practical, and will include operations on the dead body, the application of surgical apparatus, and the examination of medical and surgical patients at the bedside.)

2. The eligibility of each candidate for the Army Medical Service will be determined by the result of the examinations in these subjects only.

3. Candidates who desire it, will be examined in comparative anatomy, zoology, natural philosophy, physical geography, and botany with special reference to *materia medica*, and the number of marks gained in these subjects will be added to the total number of marks obtained in the obligatory part of the examination by candidates who shall have been found qualified for admission, and whose position on the list of successful competitors will thus be improved in proportion to their knowledge of these branches of science.

#### IV. *Course at the Army Medical School at Netley.*

1. After passing these examinations, every candidate will be required to attend one entire course of practical instruction, at the Army Medical School, on—

1. Hygiène.

2. Clinical and military medicine.

3. Clinical and military surgery.

4. Pathology of diseases, and injuries incident to military service.

2. At its conclusion, the candidate will be required to pass an examination on the subjects taught in the school.

3. If he give satisfactory evidence of being qualified for the practical duties of an army medical officer, he will be eligible for a commission as assistant-surgeon.

4. During the period of his residence at the Army Medical School, each candidate receives an allowance of 5s. per diem with quarters, or 7s. per diem without quarters, to cover all costs of maintenance; and he will be required to provide himself with uniform (viz., the regulation undress uniform of an assistant-surgeon, but without the sword).

5. All candidates are required to conform to such rules of discipline as the Senate may, from time to time, enact.

#### V. *Promotion.*

1. An assistant-surgeon must pass such examination as the Secretary of State for War may require, and must have served on full pay, with the commission of assistant-surgeon, for five years, of which two must have been passed in or with a regiment or dépôt battalion, before he can be promoted to the rank of surgeon.

2. Assistant-surgeons are, as a general rule, promoted to the rank of surgeon in the order of their seniority in the service, unless unfit for the discharge of their duties from physical or professional incompetence or misconduct. In cases of distinguished service, however, an assistant-surgeon may be promoted without reference to seniority; and in such cases the recommendation detailing the services for which the officer is proposed for promotion is published in the General Orders of the Army, and in the *Gazette* in which such promotion appears.

3. A surgeon, after twenty years' service in any rank, is styled

surgeon-major, but a surgeon of less than twenty years' full-pay service may be promoted to the rank of surgeon-major, for distinguished service. The recommendation detailing the services for which the officer is proposed for promotion for distinguished service is published in the General Orders of the Army, and in the *Gazette* in which such promotion appears.

4. A surgeon must have served ten years in the army, with a commission on full pay, of which period two years must have been passed, with the rank of surgeon, in or with a regiment or dépôt battalion, before he can be promoted to the rank of deputy inspector-general of hospitals.

5. All promotion from the rank of surgeon or surgeon-major to that of deputy-inspector, and from the rank of deputy-inspector to that of inspector, is given by selection for ability and merit, the selection being made from the whole rank of surgeons, whether styled surgeons, or surgeons-major; and the grounds of such selection are stated to her Majesty in writing, and recorded in the office of the Commander-in-Chief.

6. A deputy inspector-general of hospitals must have served five years at home, or three abroad, in that rank, before he can be promoted to the rank of inspector-general.

7. The Secretary of State for War, in cases of emergency, has power to shorten the several periods of service above mentioned, as he may deem expedient for the good of the service.

## VI. *Furloughs.*

1. Ordinary leave may be granted by the head of the department, under the rules applicable to staff-officers.

2. A medical officer on home service may have special leave to enable him to attend hospitals and medical schools, but his duties must be efficiently provided for during his absence, and no inconvenience to the public service occasioned. No expense for the performance of the duties of the absent officer must be incurred, without special authority.

## VII. *Relative Rank.*

Director-General . . . . ranks with Major-General.

Inspector-General of Hospitals,

after 3 years' service as such

under

„ Major-General.

„ Brigadier-General.



Deputy Inspector-General of Hospitals,					
after 5 years' service as such	..	..	..	..	Colonel.
under	..	..	..	..	Lieutenant-Colonel.
Surgeon-Major	..	..	..	..	Lieutenant-Colonel.
					(But as junior of that rank.)
Surgeon	..	..	..	..	Major.
Assistant-Surgeon,					
after 6 years' service as such	..	..	..	..	Captain.
Apothecary,					
after 15 years' service as such	..	..	..	..	Captain.
Assistant-Surgeon,					
under 6 years' service as such	..	..	..	..	Lieutenant.
Apothecary,					
under 15 years' service as such	..	..	..	..	Lieutenant.

Relative rank carries with it all precedence and advantages attaching to the military rank with which it corresponds.

It regulates rates of lodging-money, choice of quarters, number of servants, &c., and also detention and prize-money, but does not entitle the holder to military command of any kind whatsoever, nor to the presidency of courts-martial, courts of inquiry, committees, or boards of survey, but, when the president of such courts, committees, or boards is junior to the officer of the medical department, such officer attends as a witness, and not as a member.

Medical officers are, however, exempt from serving as members of all boards, except medical boards.

Relative rank does not entitle the holder to salutes from ships or fortresses, nor to the turning out of guards, but it entitles him, if commissioned, to salutes by sentries, or by individual soldiers.

All commissioned officers serving with the troops are entitled to funeral honours, according to their relative military rank.

Medical officers, with the relative rank of field officer, must provide themselves with chargers and horse furniture, and appear mounted, when required to attend parades.

## VIII. *Pay.*

### 1. *Medical Staff.*

						Per diem.
						£ s. d.
Director-General	..	..	..	..	..	Special.
Inspector-General	..	..	..	..	..	2 0 0

							Per diem.		
							£	s.	d.
Inspector-General—									
After 25 years' service	..	..	..	..	..	..	2	5	0
„ 30 „	..	..	..	..	..	..	2	7	0
„ 35 „	..	..	..	..	..	..	2	10	0
Deputy Inspector-General							1	10	0
After 25 years' service	..	..	..	..	..	..	1	12	0
„ 30 „	..	..	..	..	..	..	1	15	0
„ 35 „	..	..	..	..	..	..	1	17	0
Surgeon-Major .. ..							1	4	0
After 25 years' service	..	..	..	..	..	..	1	7	0
Surgeon .. ..							0	17	6
After 15 years' service	..	..	..	..	..	..	1	0	0
Assistant-Surgeon, on appointment							0	10	0
After 5 years' service	..	..	..	..	..	..	0	12	6
„ 10 „	..	..	..	..	..	..	0	15	0
„ 15 „	..	..	..	..	..	..	0	17	6

2. *General Hospital Staff.*

Governor and Commandant	..	..	..	}	Special.			
Staff-Captain, and Assistant-Commandant	..	..	..					
Acting Governor ..	..	..	..					
Captain of Orderlies	..	..	..	..		0	6	6
After 5 years' service	..	..	..	..		0	8	0
„ 10 „	..	..	..	..		0	10	0

3. *Apothecaries.*

Apothecaries .. ..	..	..	..	..	0	9	0
After 5 years' service	..	..	..	..	0	10	6
„ 10 „	..	..	..	..	0	12	0
„ 15 „	..	..	..	..	0	13	6
„ 20 „	..	..	..	..	0	15	0
„ 25 „	..	..	..	..	0	16	6
„ 30 „	..	..	..	..	0	18	0

4. *Charge Pay.*

1. The officer in medical charge of an army in the field, of 10,000 men and upwards, £1 daily; of 5,000 men and upwards, 15s. daily; of less than 5,000, 10s. daily.

2. The officer in medical charge of a colony, where the number of commissioned officers and enlisted men is 1,500 and upwards, 5s. daily.

### IX. *Uniform.*

Scarlet, with black velvet facings.

### X. *Good Service Pensions.*

Good service pensions are awarded to the most meritorious medical officers of the army, under such regulations as her Majesty may, from time to time, determine, with the advice of the Secretary of State for War.

### XI. *Queen's Physicians and Surgeons.*

Six of the most meritorious medical officers of the army are named Honorary Physicians to the Queen, and six, Honorary Surgeons to the Queen.

### XII. *Retirement on Half-Pay.*

1. Medical officers have the right to retire on half-pay, after twenty years' service.

2. Medical officers of the rank of surgeon-major, surgeon, or assistant-surgeon, are placed on the retired list at the age of fifty-five, and all inspectors-general, and deputy inspectors-general, at the age of sixty-five years.

3. The Secretary of State for War may, when he shall deem it fit, employ officers of the medical branch of the hospital department in sundry situations, at such daily rates of pay, in addition to half-pay, as he shall from time to time determine.

4. A medical officer who, having voluntarily resigned his commission, has subsequently been permitted to re-enter the army, is not allowed to reckon his former service, except under very special circumstances, which must be approved by the Secretary of State for War.

5. An apothecary has the right to retire on half-pay, after thirty years' good service.

### XIII. *Non-Effective Pay.*

1. A medical officer placed on half-pay by reduction of establishment, or on the report of a medical board, in consequence of wounds or ill-health, caused in and by the discharge of duties, or

on account of age, is entitled to half-pay at the following daily rates:—

							£	s.	d.
Inspector-General	..	..	after 30 years' service	..	..	..	1	17	6
"	"	..	" 25	"	..	..	1	13	6
"	"	..	" 20	"	..	..	1	10	0
Deputy Inspector-General	..	..	30	"	..	..	1	5	6
"	"	..	25	"	..	..	1	2	6
"	"	..	20	"	..	..	1	1	0
Surgeon-Major	..	..	25	"	..	..	1	0	0
"	"	..	20	"	..	..	0	16	8
Surgeon..	..	..	15	"	..	..	0	13	6
"	..	..	10	"	..	..	0	11	0
Assistant-Surgeon	..	..	10	"	..	..	0	10	0
"	"	..	5	"	..	..	0	8	0
"	"	..	under 5	"	..	..	0	6	0

2. The rate of half-pay awarded to officers retiring for their own convenience, after twenty years' service on full-pay, is not to exceed one-half of their full-pay at the time of retirement.

3. Every medical officer who retires, after a service upon full-pay for twenty-five years, is granted a rate of half-pay equal to seven-tenths of the daily pay he may have been in receipt of when thus retiring or proceeding on half-pay, provided he shall have served three years in his rank, or shall have served abroad for ten years in all ranks, or for five years with an army in the field. An officer of twenty-five years' full-pay service, whose service falls within neither of these conditions, is entitled to only seven-tenths of the daily pay he was in receipt of prior to his last promotion.

4. A medical officer, placed on half-pay from any other cause, is allowed only a temporary rate of half-pay (not exceeding the rates specified in Section 1, under this head) for such period and at such rate as the Secretary of State for War shall decide, with reference to the services rendered to the public by such officer.

5. Medical officers of twenty years' full-pay service, placed temporarily on half-pay under the above regulation, on account of ill-health, may be allowed to retire on permanent half-pay, at the rates fixed by Section 1, under this head, if, after one year on half-pay, they are reported by a medical board to be permanently unfit for further service.

6. Apothecaries are granted pay at the following daily rate, if placed on half-pay by reduction of establishment, or on account of age, or through ill-health, certified, to the satisfaction of the



Secretary of State for War, to have been contracted in and by the service :—

						£	s.	d.	
Apothecary to the Forces	..	after 30 years' service	..			0	9	0	per diem.
"	"	"	..	"	25	"	0	8	0
"	"	"	..	"	20	"	0	7	0
"	"	"	..	"	15	"	0	6	0
"	"	"	..	"	10	"	0	5	0

#### XIV. *Service on the West Coast of Africa.*

1. A medical officer volunteering for service on the West Coast of Africa must, in order to come under the provisions of the two following articles, serve on the coast for a period of at least twelve months, and is governed by the following regulations.

2. Each year of such service is allowed to reckon towards promotion and retirement as two years of ordinary service, but it is not so reckoned towards increased pay, or qualification for the rank of surgeon-major. If an officer be permitted, at his own wish, to prolong his stay on the coast, his further service is allowed to reckon in proportion.

3. For each year's service on the coast, a medical officer is entitled to a year's leave at home, and for every additional period beyond a year, he is allowed an equivalent extension of leave.

#### XV. *Will of Surgeon in the Army.*

A surgeon in the army is considered a soldier, within the provisions contained in 29 Car. II. c. 3, s. 23, and 7 Will. IV. and 1 Vict. c. 26, s. 11, exempting soldiers, in actual military service, from making formal wills.

A surgeon who has embarked on board a vessel to join his regiment abroad is in actual military service.<sup>1</sup>

### *Sec. II.—Surgeon in the Navy.*

#### I. *Examination of Candidates for the appointment of Assistant-Surgeon.*

1. A candidate for the appointment of assistant-surgeon in the navy must make a written application to that effect, addressed to the Secretary of the Admiralty.

<sup>1</sup> See Donaldson, in the goods of, 2 Curt. 386.

2. As vacancies occur, the number of candidates required are ordered to attend for competitive examination at the Admiralty office.

3. Every candidate must be registered as qualified to practise both medicine and surgery, and must make a declaration that he is free from any mental or bodily disease, defect, or infirmity which could interfere with the efficient discharge of his duties as a medical officer in the navy.<sup>1</sup>

4. Each candidate must produce—

*a.* A certificate of good moral character, signed by a magistrate, a clergyman, or by a legally qualified physician or surgeon.

*b.* A certificate that he is not less than twenty, nor more than twenty-eight years of age.

*c.* Certificates of attendance at lectures, &c., and proof that, subsequently to the age of eighteen, he has actually attended a recognised hospital for eighteen months, in which the average number of patients is not less than one hundred.

*d.* Certificates that he has been engaged in actual dissection for twelve months, and that he has performed the principal capital and minor operations on the dead body, under a qualified teacher.

5. The examination comprises the following subjects, viz.:—Anatomy, Surgery, Physiology, or Institutes of Medicine, Practice of Medicine, Chemistry, Materia Medica, Midwifery, and Botany. A favourable consideration is given to those who are acquainted with the collateral sciences more immediately connected with the profession, such as Natural History, Natural Philosophy, and the use of the microscope in diagnosis.

6. Such candidates as are found, in all respects, competent for the appointment of assistant-surgeon, are forthwith nominated to one of her Majesty's ships, or to a naval hospital at home; or, if their services are not immediately required, their names are duly registered for early appointments, as vacancies may occur. But it is distinctly to be observed, that candidates admitted into the

<sup>1</sup> His physical fitness will be determined by a board of medical officers, who will be required to certify that his vision is sufficiently good to enable him to perform any surgical operation without the aid of glasses, and that he is free from organic disease, constitutional weakness, or other disability likely to unfit him for the Naval Service, in any climate.

naval medical service must serve in any vessel to which they may be appointed; and that in the event of their being unable to do so from sea-sickness, their names cannot be continued on the naval medical list, nor can they, of course, be allowed half-pay.

## II. *Promotion.*

1. After completing three years' full-pay service, assistant-surgeons are allowed to be examined for the rank of surgeon, but no assistant-surgeon is promoted to the rank of surgeon until he has served five years, two of which must have been in a ship actually employed at sea.

2. A limited number of those candidates who pass the best examination, on entering the service, are promoted annually to the rank of surgeon at an earlier period than would occur under ordinary circumstances; and these promotions are awarded as follows:—The candidate who passes the best examination of his year—after five years' service; the candidate who passes the second best examination of his year—after six years' service; the candidate who passes the third best examination of his year—after seven years' service; provided, however, that their second examinations are passed in an equally creditable manner, and that their conduct, during the whole time they have been in the service, has, in all respects, been satisfactory.

3. Twenty years' service on full-pay are required to qualify for the rank of staff-surgeon.

4. The whole time served on full-pay as an assistant-surgeon is allowed to surgeons to qualify for the rank of staff-surgeon, provided that the officer passed the examination for surgeon before completing ten years' service; otherwise, only ten years served as assistant-surgeon are allowed to count.

5. Staff-surgeons are appointed to the flag-ships of commanders-in-chief on foreign stations, with an allowance of 5s. a day, in addition to their established pay.

6. Promotion to the rank of staff-surgeon is open to officers, for distinguished or special service, although twenty years on full-pay may not have been completed. Such staff-surgeons have 16s. a day half-pay.

## III. *Uniform.*

Medical officers of the navy wear the same uniform and

appointments, with some slight modifications, as are worn by officers of corresponding rank in the military branches, but they are distinguished from the military branch by the introduction of scarlet velvet stripes, quarter-inch wide, between the gold lace stripes worn on the sleeves of uniform coats; by the arrangement of nine buttons on the breast of the coat, placed by threes; and by the omission of the sword and baton, and the anchor and cable on the epaulettes, for which is substituted a star.

#### IV. *Pay.*

The full and half-pay of naval medical officers is in accordance with the following scale:—

FULL-PAY.		Per Diem.		
		£	s.	d.
Inspector-General of Hospitals and Fleets—				
On promotion, or under 25 years' service ..	..	2	5	0
„ above 25 „ ..	..	2	6	0
And for each additional year of service, 1s. a day more, until the maximum is reached, namely ..	..	2	10	0
Deputy Inspector-General of Hospitals and Fleets—				
On promotion, or under 22 years' service ..	..	1	11	0
„ above 22 „ ..	..	1	12	0
And for each additional year of service, 1s. a day more, until the maximum is reached, namely ..	..	1	18	0
Staff-Surgeon—				
On promotion, or under 20 years' service ..	..	1	3	0
„ above 20 „ ..	..	1	4	0
And for each additional year of service, 1s. a day more, until the maximum is reached, namely ..	..	1	10	0
Surgeon—				
On promotion, or under 14 years' service ..	..	0	18	0
„ „ 17 „ ..	..	1	0	0
And for each additional year of service, 1s. a day more, until the maximum is reached, namely ..	..	1	2	0
Assistant-Surgeon—				
Under 5 years' service ..	..	0	11	0
„ 8 „ ..	..	0	12	6
„ 11 „ ..	..	0	14	0
„ 14 ( provided he passed his examination for )	..	0	15	6
Above 14 ( surgeon, while under 10 years' service )	..	0	17	0



## HALF-PAY.

						£	s.	d.
Assistant-Surgeon—								
Under	5 years' service	..	..	..	..	0	6	0
„	8 „	..	..	..	..	0	8	0
„	11 „	..	..	..	..	0	10	0
Above 11 years', provided he passed his examination for surgeon, while under 10 years' service .						0	11	0
Surgeon—								
On promotion, or under	14 years' service	..	..	..	..	0	11	0
„	17 „	..	..	..	..	0	13	0
„	above 17 „	..	..	..	..	0	14	0
Staff-Surgeon—								
On promotion, or under	20 years' service	..	..	..	..	0	16	0
„	above 20 „	..	..	..	..	0	16	6
And for each additional year of service, 6d. a day more, until the maximum is reached, namely ..						0	18	6
Deputy Inspector-General of Hospitals and Fleets—								
On promotion, or under	22 years' service	..	..	..	..	1	1	0
„	above 22 „	..	..	..	..	1	2	0
And for each additional year of service, 1s. a day more, until the maximum is reached, namely ..						1	7	0
Inspector-General of Hospitals and Fleets—								
On promotion, or under	25 years' service	..	..	..	..	1	11	0
„	above 25 „	..	..	..	..	1	12	0
And for each additional year of service, 1s. a day more, until the maximum is reached, namely ..						1	18	0

V. *Prize Money.*

1. An inspector-general, or deputy inspector-general of hospitals and fleets, when embarked with a fleet, is entitled to forty-five shares.

2. A staff-surgeon is entitled to thirty-five shares.

3. A surgeon is entitled to thirty shares.

4. An assistant-surgeon is entitled to twenty shares.

These shares are calculated on the nett proceeds of the prize, after provision has been made for the flag-share (if any), and for the portion of the commanding officer or officers.

VI. *Relative Rank.*

An inspector-general of hospitals and fleets, after three years'

service on full-pay as such, ranks with a rear-admiral, according to the date of the completion of the service stated.

An inspector-general of hospitals and fleets, under three years' service on full-pay as such, ranks with a commodore of the first and second class, according to date of commission.

A deputy inspector-general of hospitals and fleets, after five years' service on full-pay as such, ranks with a captain over three years. The captain reckons seniority from the date of completing three years in that rank, and the deputy inspector-general, from the date of completing five years in that rank.

A deputy inspector-general of hospitals and fleets, under five years' service on full-pay as such, ranks with captain under three years.

A staff-surgeon ranks with a commander, according to date of commission.

A surgeon ranks with a lieutenant above eight years' seniority, according to date of commission.

An assistant-surgeon, after six years' service on full-pay as such, ranks with a lieutenant under eight years' seniority, according to date of commission.

An assistant-surgeon under six years' service on full pay as such, ranks with a sub-lieutenant, according to date of commission or order.

## VII. *Miscellaneous Regulations.*

1. Assistant-surgeons at home, after completing their time for examination for the rank of surgeon, may be granted two months leave of absence on full-pay, on condition of their resuming their studies at a medical school or hospital.

2. Retirement is provided for according to age and service, under special regulations.

3. The hospital allowances for naval medical officers at home and abroad, in lieu of provisions for themselves and servants, and for fuel and light, are as follows:—

	At home.		Abroad.	
Inspectors-general of hospitals	..	£85 ..	..	£130
Deputy inspectors-general ..	..	67 ..	..	112
Staff-surgeons, and surgeons ..	..	53 ..	..	112
Assistant-surgeons .. ..	..	39 ..	..	108

4. In cases where medical officers draw provisions or fuel from public stores, they are charged for the same at cost price.

5. The travelling allowances, extra pay, lodging money, and compensation for losses, are fixed for naval medical officers according to their relative rank in the service.

6. Medical officers have cabins according to their relative rank in the service, excepting always that the senior executive officer, of whatever rank, has the one most suitable for his duties.

7. A surgeon in the navy is considered a mariner or seaman, within the provision contained in 29 Car. II. c. 3, s. 23, and 7 Will. IV. and 1 Vict. c. 26, s. 11, exempting mariners or seamen, being at sea, from making formal wills for disposing of their personal property.<sup>1</sup>

### *Sec. III.—Surgeon in the Indian Army.*

#### *I. Qualifications of Candidates.*

1. All natural-born subjects of her Majesty, between twenty-two and twenty-eight years of age at the date of the examination, and of sound bodily health, may be candidates.

2. The candidate must subscribe, and send in to the Military Secretary, India Office, a declaration, stating his age, attesting his readiness to engage for the service, and to proceed on duty immediately on being gazetted, and containing an averment that he labours under no mental nor constitutional disease, nor any imperfection or disability that can interfere with the most efficient discharge of the duties of a medical officer.

3. The declaration must be accompanied by the following documents:—

*a.* Proof of age, either by extract from the register of the parish in which the candidate was born, or by his own declaration, pursuant to the Act 5 & 6 Will. IV. c. 62; such extract and declaration, respectively, bearing the stamps required by law.

<sup>1</sup> *Saunders, in the goods of*, 1 L. R., P. & M. 16; 35 L. J., P. & M. 26. In this case, a naval surgeon was invalided at a foreign station, and wrote a letter at sea, on board a steam-ship, on which he was a passenger homewards, containing directions as to the manner in which he wished his property to be disposed of. It was held that, although he was not on duty at the date of the letter, yet, as he was returning from service, his will was entitled to probate, as made at sea.

[The extract from the register will require a 1d. stamp, by 33 & 34 Vict. c. 97, and the declaration, a 2s. 6d. stamp, by the same Act.

The following is the form of declaration required by the above regulation:—

“I, \_\_\_\_\_, do solemnly and sincerely declare that I attained the age of \_\_\_\_\_ years on the \_\_\_\_\_ day of \_\_\_\_\_ last, and I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act passed in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled ‘An Act to repeal an Act of the present session of Parliament, intituled “An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the State, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary extra-judicial oaths and affidavits;”’ and to make other provisions for the abolition of unnecessary oaths.”

N.B. Any person wilfully and corruptly making and subscribing any such declaration, knowing the same to be untrue in any material particular, is guilty of a misdemeanor. 5 & 6 Will. IV. c. 62, s. 21.]

b. A certificate of moral character from a magistrate, or a minister of the religious denomination to which the candidate belongs, who has personally known him for at least two preceding years.

4. The candidate must possess a diploma in surgery, or a licence to practise it, as well as a degree in medicine, or a licence to practise it in Great Britain or Ireland.

5. Degrees, diplomas, licences, and certificates of their registration in accordance with the Medical Act of 1858, must be lodged at the India Office, for examination and registry, at least one fortnight before the candidate appears for examination.

## II. *Examination of Candidates.*

### 1. *As to Physical Fitness.*

The same as under the Army Medical Service regulations.<sup>1</sup>

<sup>1</sup> See page 106.



## 2. *In Special Subjects.*

The same as under the Army Medical Service regulations,<sup>1</sup> with the exception that to the list of subjects for the voluntary examination may be added physical geography, and the elements of physics.

The examiners in London prepare a list, in order of merit, with the marks affixed in the different subjects, to be transmitted to the director-general, and communicated to the professors of the Army Medical School. If any candidate is found to be deficient in any particular subject, this is stated, in order that he may receive special instruction on the point, at Netley.

## III. *The Course at Netley.*

1. The regulations as to allowance, uniform, discipline, and courses of instruction are the same as for the Army Medical Service.<sup>2</sup>

2. At the conclusion of the courses of instruction, the candidate is required to pass an examination on the subjects taught in the school. The examination is conducted by the professors of the school.

3. The director-general, or any medical officer deputed by him, may be present at, and take part in the examination. If the candidate give satisfactory evidence of being qualified for the practical duties of an army medical officer, he is eligible for a commission as assistant-surgeon.

## IV. *Position on List of Assistant-Surgeons.*

The persons who are pronounced by the examiners to be the best qualified in all respects, are appointed to fill the requisite number of appointments as assistant-surgeons in her Majesty's Indian Army. Their position on the list of assistant-surgeons is determined by the combined results of the preliminary and of the final examinations, and, so far as the requirements of the service permit, they have the choice of presidency in India, according to their position on that list.

## V. *Date of Commissions.*

The commissions of assistant-surgeons bear date from the day of joining at the Army Medical School.

<sup>1</sup> See page 106.

<sup>2</sup> See page 107.

*VI. Embarkation for India.*

1. All assistant-surgeons, who neglect or refuse to proceed to India, under the orders of the Secretary of State for India, within two months from the date of their appointment, are considered as having forfeited it, unless special circumstances justify a departure from this regulation.

*VII. Allowances, &c.*

1. Passage allowance to India, on appointment, is given, or a passage provided. When passages are provided on board the Indian troop-ships, a charge for messing is made at the rate laid down in the Royal Passage Warrant of 1865.

2. Pay at 10s. a day is allowed from date of passing final examination at the Army Medical School.

3. Time of service for pension reckons from date of arrival in India. The period of residence at the Army Medical School reckons as service for the full-pay pension only. Indian medical officers, on first appointment, only come into receipt of Indian pay and allowances from the date of their arrival within the limits of the presidency to which they have been gazetted. When provided with passages on the troop-ships, they draw Indian pay and allowances from date of disembarkation at Bombay.

4. The duties are those hitherto performed by the medical officers of the East India Company's service, with the exception of those relating to European troops.

5. Surgical instruments are provided, in India, by the Governments, for the use of medical officers.

*VIII. Grades.*

The grades of medical officers in the Indian military forces are four in number, viz. :—

1. Inspector-general.
2. Deputy inspector-general.
3. Staff or regimental surgeon, who, after twenty years' service, is styled surgeon-major.
4. Staff or regimental assistant-surgeon.

*IX. Pay and Allowances when in India.*

1. Officers receive pay, in India, according to the following scale :—

Rank.					Years' Service.	Pay per Mensem.		
						R.	A.	P.
Surgeon-Major	..	..	..	..	25	888	12	0
"	..	..	..	..	20	852	3	7
Surgeon	..	..	..	..	15	677	6	11
"	..	..	..	..	12	640	14	6
Assistant-Surgeon	..	..	..	..	10	410	9	5
"	..	..	..	..	6	392	5	2
"	..	..	..	..	5	304	14	2
"	..	..	..	..	under 5	286	10	0

2. The salaries of the principal administrative and military appointments are fixed at the following consolidated sums:—

	Rs. per Mensem.		
Inspector-general, Bengal	..	..	2,700
" Madras	..	..	2,500
" Bombay	..	..	2,500
Deputy inspector-general	..	..	1,800
Surgeon-major, in charge of native regiments	..	..	1,000
			with Rs. 90, horse allowance, in cavalry regts.
Surgeon, in charge of native regiments	..	..	800
			with Rs. 90, ditto.
Assistant-surgeon, above five years' full-pay service, in charge of native regiments	..	..	600
			with Rs. 60, ditto.
Assistant-surgeon, under five years' do.	..	..	450
			with Rs. 60, ditto.

3. A medical officer, however employed, is restricted to the rate of pay laid down in paragraph 1, until he has passed the examination in Hindustani, known as the "Lower Standard."

4. The salaries of other medical appointments in the civil and military departments are consolidated, and vary from Rs. 1,800 to Rs. 400 per mensem.

#### X. *Furloughs.*

1. An officer is eligible for two years' furlough, on the completion of eight years' actual service in India, for a third year, after six years' actual service from the date of his return to duty, and for a fourth or fifth year, after similar intervals of six years.

2. While on furlough, an officer is allowed pay at the rate of 50 per cent. of his allowances.

3. No absentee draws more than £1,200, or less than £250 per annum.

4. The aggregate amount of furlough, with pay and retention of appointment, whether on private affairs or medical certificate, that may be granted to an officer during his service, is limited to eight years.

5. Assistant-surgeons under six years' service, and in receipt of Indian allowances as subalterns, on returning to England on sick certificate, receive passage allowance.

### XI. *English Furlough Pay.*

Officers of the Indian Medical Service receive pay, while on furlough in Europe, according to the following scale:—

Rank.	After 30 years' Service on Full-pay.	After 25 years' Service on Full-pay.	After 20 years' Service on Full-pay.	After 15 years' Service on Full-pay.	After 12 years' Service on Full-pay.	After 10 years' Service on Full-pay.	After 5 years' Service on Full-pay.	Under 5 years' Service on Full-pay.
	£ s. d.	£ s. d.	£ s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
Inspector-General	2 5 0	2 5 0	2 0 0*	—	—	—	—	—
Deputy Inspector-General ..	1 14 0	1 10 0	1 8 0*	—	—	—	—	—
Surgeon-Major ..	—	1 5 0	1 2 0	—	—	—	—	—
Surgeon ..	—	—	—	18 0	15 0	—	—	—
Assistant-Surgeon	—	—	—	—	—	13 0	11 6	10 0

\* Or on promotion, should these periods of service not be already completed.

### XII. *Retiring Pensions.*

1. Officers of the Indian Medical Service are allowed to retire on the following scale of pension, on completion of the required periods of service:—

After 30 years' service in India	..	..	..	£550
„ 27 „ „ „	..	..	..	456
„ 24 „ „ „	..	..	..	365
„ 21 „ „ „	..	..	..	292
„ 17 „ „ „	..	..	..	220

2. The scale for medical officers of privileged furlough and leave of absence, to be allowed to count for the retiring pension, is as follows:—



- 1 year 8 months in 17 and under 20 years' service.  
 2 years 0 „ in 20 „ 25 „  
 3 „ 0 „ in 25 „ 30 „  
 4 „ 0 „ in 30 and upwards.

3. An inspector-general, after five years' active employment in India in that grade, is entitled to retire upon a pension of £350 per annum, in addition to that to which he may be entitled under the above scale.

4. A deputy inspector-general, after five years' active employment in India in that grade, is entitled to retire upon a pension of £250 per annum, in addition to the pension to which he may be entitled under the above scale.

5. In each of two last-mentioned cases, six months' absence, on medical certificate, is allowed to count towards actual service in those grades.

6. Officers compelled to leave the service on account of ill-health, and entitled to half-pay pension, under present regulations, are allowed the half-pay of their relative rank, as below:—

Rank.	Relative Rank.	Rates of Half-pay.	
		Per Day.	Per Annum.
		s. d.	£ s. d.
Surgeon-Major .. .. .	Lieutenant-Colonel ..	11 0	200 15 0
Surgeon .. .. .	Major .. .. .	9 6	173 7 6
Assistant-Surgeon .. ..	Captain .. .. .	7 0	127 15 0
„ under 6 years' service ..	Lieutenant .. ..	4 0	73 0 0*
„ under 3 years' service ..	„ .. ..	2 6	45 12 6*

\* Under the Regulations of the Indian Service.

7. A medical officer, retiring after a service of twenty-five years and upwards, may, if recommended for the same by the head of his department, receive a step of honorary rank, but without any consequent increase of pay.

8. Officers cannot retire, in *India*, on half-pay.

### XIII. Examination of Assistant-Surgeons, previous to Promotion.

1. This examination is intended as a test for promotion, and may be taken at any time after the assistant-surgeon has served five or more years.

2. When assistant-surgeons have served the requisite time, they are examined in the following manner:—

A series of printed questions, prepared by the inspector-general of the presidency, is sealed and sent to the principal medical officers of stations where assistant-surgeons may be eligible for examination. It is the duty of the principal medical officer of the station to deliver these sealed questions to the assistant-surgeons, and to see that they are answered without the assistance of books, notes, or communication with any other person. The answers are to be signed, and delivered, sealed, to the principal medical officer, who is to send them, unopened, to the inspector-general of the presidency, together with a certificate from the surgeon of the regiment, or other superior medical officer, that the assistant-surgeon has availed himself of every opportunity of practising surgical operations on the dead body.<sup>1</sup>

3. The assistant-surgeon is also required to transmit, together with his answers, to the inspector-general of the presidency, a medico-topographical account of the station where he may happen to be at the time, or of some other station where he may have been resident sufficiently long to enable him to collect the necessary information for such a report. Failing this, he must send a medico-statistical report of his regiment, for a period of at least twelve months.

4. If the inspector-general of the presidency is satisfied with the replies to the questions, and with the certificates and medico-topographical or statistical report, the assistant-surgeon is held qualified for promotion.

5. The assistant-surgeon is thus subjected to three separate examinations, within the first ten years of his service, each examination having a definite object. The *first*, to ascertain, previous to his admission into the service as a candidate, his scientific and professional education, and to test his acquirements in the various branches of professional knowledge; the *second*, after having passed through a course of special instruction in the Army Medical School, to test his knowledge of the special duties of an army medical officer; and the *third*, previous to his promotion, to ascertain that he has kept pace with the progress of medical science.

<sup>1</sup> The assistant-surgeon may see this certificate, before it is sent to the inspector-general.

#### XIV. *Promotion.*

1. The promotion of assistant-surgeons is now regulated by length of service, and not, as heretofore, by succession to vacancies in a fixed establishment of officers of the higher grades.

2. Assistant-surgeons of twelve years' service from the date of first commission (of which two years must have been passed in charge of a native regiment), who have passed the prescribed examination in professional subjects, are promoted to the rank of surgeon.

3. A surgeon, whether on the staff or attached to regiments, must have served ten years in India, of which two must have been passed, with the rank of surgeon, in or with a regiment, or as a civil surgeon, before he is eligible for promotion to the rank of deputy inspector-general of hospitals.

4. A deputy inspector-general of hospitals must have served three years in India as such, before he is eligible for promotion to the rank of inspector-general.

5. In cases, however, of emergency, or when the good of the service renders such alteration desirable, it is competent for the Governor-General in Council to shorten the several periods of service above mentioned, in such manner as he may deem fit and expedient.

#### XV. *Compulsory Retirement.*

1. With a view to maintain the efficiency of the service, all medical officers below the rank of deputy inspector-general of hospitals are placed on the retired list when they have attained the age of fifty-five years, and all inspectors-general and deputy inspectors-general, when they have attained the age of sixty-five years.

2. The tenure of office by a deputy inspector-general of the Indian service is, as in the case of inspectors-general, limited to five years; officers being, however, if not disqualified by age, eligible either for employment for a second tour of duty in the same grade, or for employment in the higher grade of inspector-general, by promotion thereto.

3. The rank of inspector-general and deputy inspector-general, conferred upon officers of the Indian medical service under the royal Warrant of the 13th January, 1860, is considered as substantive rank.



These officers, on vacating office at the expiration of the five years' tour of duty, are permitted to draw, respectively, an unemployed salary of Rs. 1,200 per mensem, in the former, and Rs. 900, in the latter case, for a period of six months from the date of their vacating office, after which they are placed, while unemployed, on the rate of English furlough pay.<sup>1</sup> These sums, deducted from the consolidated salary, regulate the moiety of staff salary to be drawn by officers of those grades during absence on sick certificate.

4. An inspector or deputy inspector-general of hospitals, who has completed his term of service, and has reverted to British pay, may reside in Europe, at the same time qualifying for higher pension.

#### XVI. *Relative Rank.*

The relative rank of the medical officers of her Majesty's Indian military forces is as follows:—

1. Staff or regimental assistant-surgeon, as a lieutenant, according to the date of his commission; and after six years' service, as captain, according to the date of the completion of such service.

2. Staff or regimental surgeon, as major, according to the date of his commission.

3. Surgeon-major, as lieutenant-colonel, but junior of that rank.

4. Deputy inspector-general, as lieutenant-colonel, according to the date of his appointment; and after five years' service in India as deputy inspector-general, as colonel, according to the date of the completion of such service.

5. Inspector-general of hospitals, as brigadier-general, according to the date of his appointment; if with an army in the field, or after three years' service in India as inspector-general, as a major-general, from the date of his joining such army in the field, or according to the date of the completion of such service.

#### XVII. *Pensions (Wound and Family).*

1. Medical officers are entitled to all the allowances granted to her Majesty's Indian military forces on account of wounds and injuries received in action, as combatant officers holding the same relative ranks.

2. The widows and children of medical officers are granted

<sup>1</sup> See page 124.



pensions not less than those to which they would be entitled under the provisions of the Royal Warrant of June 15th, 1855.

3. The claims to pension of widows and families of medical officers are treated under the provisions of such Royal Warrant, regulating the grant of pensions to the widows and families of British officers, as may be in force at the time being.

#### XVIII. *Will of Surgeon in the Indian Army.*

A surgeon in the Indian medical service is considered a soldier, within the provision contained in 29 Car. II. c. 3, s. 23, and 7 Will. IV. and 1 Vict. c. 26, s. 11, exempting soldiers, in actual military service, from making formal wills.<sup>1</sup>

#### *Sec. IV.—Surgeon in Passenger Ship.*

##### *I. When a Medical Man must be carried.*

1. Every passenger ship must carry a duly qualified medical practitioner, to be rated on the ship's articles.<sup>2</sup>

*a.* When the duration of the intended voyage exceeds eighty days, in the case of ships propelled by sails, and forty-five days, in the case of ships propelled by steam, and the number of passengers on board exceeds fifty.

*b.* Whenever the number of passengers on board (including cabin passengers, officers, and crew) exceeds 300.

2. The duration of the voyage is computed by a scale issued by the Emigration Commissioners, acting by and under the authority of one of her Majesty's principal Secretaries of State.<sup>3</sup>

##### *II. Qualifications.*

1. Every person who is to be carried as medical practitioner in a passenger ship must be registered under the Medical Act, 1858, as a physician, surgeon, or apothecary, except in the case of a foreign ship.<sup>4</sup>

2. In the case of a foreign ship, it is sufficient if he be authorized by law to practise as a physician, surgeon, or apothecary, in the country to which such ship may belong.<sup>5</sup>

<sup>1</sup> See Donaldson, in the goods of, 2 Curt. 386.

<sup>2</sup> 18 & 19 Vict. c. 119, s. 41.

<sup>3</sup> *Ib.* s. 30.

<sup>4</sup> *Ib.* s. 42.

<sup>5</sup> *Ib.* s. 42.

3. His name must have been notified to the emigration officer at the port of clearance, and must not have been objected to by him.<sup>1</sup>

4. He must be provided with proper surgical instruments, to the satisfaction of such emigration officer.<sup>2</sup>

5. Where the majority of the passengers, or as many as three hundred, are foreigners, any medical practitioner, who may be approved by the emigration officer at the port of clearance, may be carried.<sup>3</sup>

### III. *Duties.*

In addition to his ordinary duties as surgeon, the medical practitioner on board, aided by the master of the ship, is empowered to exact obedience to all rules and regulations prescribed by any Order in Council for preserving order, promoting health, securing cleanliness and ventilation, and relating to the supply of fresh water on board such ship; and any person on board obstructing the medical practitioner in the execution of any duty imposed upon him by any such rule or regulation, is liable, for each offence, to a penalty not exceeding £2, and to be imprisoned for a period not exceeding one month, at the discretion of the justices who may adjudicate on the complaint.<sup>4</sup>

The issue of lime-juice is at the discretion of the medical

<sup>1</sup> 18 & 19 Vict. c. 119, s. 42.

<sup>2</sup> *Ib.* s. 42. The following list of necessary surgical and midwifery instruments has been issued by the Emigration Commissioners:—

1. A pocket dressing case, containing scalpel, two bistouries (blunt-pointed and sharp); gum lancet, tenaculum forceps, spatula, scissors, two probes, silver director, caustic case, and curved needles of different sizes.
2. A lancet case, with at least four lancets.
3. A case of tooth instruments.
4. Midwifery forceps, and trachea tubes.
5. Set of silver and gum elastic catheters, including female catheter, and some bougies.
6. One amputating knife and catlin, amputating saw, one Hey's saw, and tourniquet.
7. Silk of different sizes, for ligatures and sutures.
8. The "British Pharmacopœia."

#### *Desirable Additions:—*

1. Cupping apparatus.
2. Trocar and canula.
3. Trephine and elevator.
4. Craniotomy forceps, perforator, and blunt hook.

<sup>3</sup> 18 & 19 Vict. c. 119, s. 42.

<sup>4</sup> *Ib.* ss. 59 & 60.

practitioner, during the portions of the voyage when the ship is not within the tropics.<sup>1</sup>

#### IV. *Miscellaneous Provisions.*

1. Any person attempting to proceed as medical practitioner in a passenger ship, without possessing the necessary qualification, and all persons aiding and abetting therein, are liable to a penalty not exceeding £100, and not less than £10.<sup>2</sup>

2. In every passenger ship, a sufficient space must be properly divided off, to the satisfaction of the emigration officer at the port of clearance, to be used exclusively as a hospital or hospitals for the passengers. It must be situate under the poop, or in the round house, or in a deck house properly built and secured, or on the upper passenger deck. It must in no case be less than eighteen clear superficial feet for every fifty passengers, and must be fitted with bed-places, and supplied with proper beds, bedding, and utensils.<sup>3</sup>

3. A proper supply of medicines and medical comforts must be provided by the owner or charterer of the ship, and placed under the charge of the medical practitioner, to be used at his discretion.<sup>4</sup>

### *Sec. V.—Surgeon in Merchant Ship.*

#### I. *When a Medical Man must be carried.*

Every ship employed in trading, or going between places in the United Kingdom, and some place or places situate beyond the following limits, viz.:—The coasts of the United Kingdom, the islands of Guernsey, Jersey, Sark, Alderney, and Man, and the continent of Europe between the Elbe and Brest, inclusive, having one hundred persons, or upwards, on board, must carry a physician, surgeon, or apothecary, duly registered under the Medical Act, 1858, as part of her complement.<sup>5</sup>

#### II. *Medicines, &c.*

It is the duty of the owner of such ship to provide, and cause to be kept on board, a supply of medicines and medical comforts, according to a scale issued by the Board of Trade, and a sufficient

<sup>1</sup> 26 & 27 Vict. c. 51, s. 9.

<sup>3</sup> *Ib.* s. 24.

<sup>4</sup> *Ib.* s. 43.

<sup>2</sup> 18 & 19 Vict. c. 119, s. 42.

<sup>5</sup> 17 & 18 Vict. c. 104, ss. 2 and 230.

quantity of lime or lemon-juice, or such other anti-scorbutics as may be directed by Orders in Council, and if any seaman refuse or neglect to take the same, an entry to that effect must be made in the log-book, and signed by the medical practitioner on board.<sup>1</sup>

The owner is liable to an action by any one of the crew who suffers injury in consequence of his neglect of these duties.<sup>2</sup>

### III. *Liability for Breach of Contract.*

A medical practitioner who accepts an appointment as surgeon to a ship, and afterwards refuses to go out in such ship, as surgeon, is liable to an action for breach of contract, and is responsible for any loss which the owner may sustain in consequence of his default, and that, whether the contract be drawn up in express terms, or can be collected from a correspondence.

If the owner deceive the surgeon with respect to the class to which the ship belongs, or as to the amount of her tonnage, such a representation is not a warranty, and forms no part of the contract, but the surgeon will have a right of action for any damage he may sustain in consequence of such representation turning out to be false, if it be also fraudulently made.

A statement that a ship will carry "emigrant labourers not over forty" is satisfied if no more than forty such men are taken, although, with their wives and children, that number is exceeded.

If the appointment be subject to the approval of certain commissioners, such approval is not a condition precedent to the obligation to go out as surgeon.<sup>3</sup>

### IV. *Recovery of Wages.*

A surgeon to a ship may sue the owners or master, personally, for the recovery of his wages, but the case is not quite clear whether he is considered a "mariner" in the eyes of the law, and entitled, as such, to sue for wages in the Court of Admiralty. Probably, however, he has this right.

The question is of some importance, as a "mariner" has a maritime lien for wages extending over the whole ship,<sup>4</sup> and the

<sup>1</sup> 30 & 31 Vict. c. 124, s. 4.

<sup>2</sup> See *Woolf v. Claggett*, 3 Esp. 256; *Couch v. Steel*, 3 E. and B. 402.

<sup>3</sup> See *Richards v. Hayward*, 2 M. and G. 574.

<sup>4</sup> *The Neptune*, 1 Hagg. 238.



freight, as appurtenant thereto,<sup>1</sup> and, as long as a plank remains, he is entitled to the proceeds as a security;<sup>2</sup> nor can the Court of Admiralty restrain him from proceeding against the ship, and drive him to a personal action against the owners, though they may be solvent.<sup>3</sup>

In either case, the action must be commenced within six years,<sup>4</sup> and if the amount due is under £50, the suit, except under special circumstances, must not be instituted in the Admiralty Court, or in any of the superior courts,<sup>5</sup> but it may be tried, in a summary manner, before any two justices of the peace, or one stipendiary magistrate, acting in or near to the place at which the service has terminated, or at which the person upon whom the claim is made resides.<sup>6</sup>

It was decided, in the *Lord Hobart*,<sup>7</sup> that a ship's surgeon could not sue in the Admiralty Court for medicines furnished for the ship's crew, and, in the same case, the question was discussed whether he could sue in that court for wages. Sir W. Scott was of opinion that he could not, on the ground that he was never expected to act in the capacity of a mariner, but the attention of the court had not been called to the previously decided cases.

The point seems to have been first raised in *Maddox v. —*,<sup>8</sup> and the right to have been admitted. In *Mills v. Long*,<sup>9</sup> it had been decided that he might sue as a mariner, on the ground that he was under the command of the master, and obliged, if called upon by him, to assist in navigating the ship.<sup>10</sup> In *Ross v. Walker*<sup>11</sup> a similar decision had been given: "For," said the Court, "the surgeon preserves those who preserve the ship." In the same case, also, it had been laid down that it was the same thing whether the surgeon was to be paid a gross sum, or so much per month. In the *Wharton*<sup>12</sup> it appeared, incidentally, that the ship had been sold, upon an arrest for wages by the surgeon.

In the *Prince George*,<sup>13</sup> a case decided since the *Lord Hobart*, Sir John Nicholl quoted the case of *Mills v. Long*, as being law at that time.

<sup>1</sup> *The Lady Durham*, 3 Hagg. 200.

<sup>2</sup> *The Sydney Cove*, 2 Dods. 13; *The Madonna D'Idra*, 1 Dods. 40.

<sup>3</sup> *The Arab*, 5 Jur., N.S., 417.

<sup>4</sup> 21 Jas. I. c. 16; 4 & 5 Anne, c. 16, s. 17.

<sup>5</sup> 17 and 18 Vict. c. 104, s. 189.

<sup>6</sup> *Ib.* s. 188.

<sup>7</sup> 2 Dods. 104.

<sup>8</sup> 12 Mod. 526.

<sup>9</sup> *Sayer*, 136.

<sup>10</sup> Per Ryder, C. J.

<sup>11</sup> 2 Wils. 265.

<sup>12</sup> 3 Hagg. 148, note.

<sup>13</sup> 3 Hagg. 379.

*Sec. VI.—Medical Inspector of Merchant Ships.<sup>1</sup>**I. By whom appointed.*

1. Any local marine board may, upon being required by the Board of Trade so to do, appoint, and remove, a medical inspector of ships for the port.<sup>2</sup>

2. At ports where there are no local marine boards, the Board of Trade may appoint, and remove, such inspectors.<sup>3</sup>

*II. Remuneration.*

The remuneration of an inspector, appointed by a local marine board, is fixed by such board, but is subject to the control of the Board of Trade. Where an inspector is appointed by the Board of Trade, that board also fixes his remuneration.<sup>4</sup>

*III. Duties.*

1. It is the duty of a medical inspector of merchant ships to inspect the medicines, medical stores, lime, or lemon-juice, sugar, and vinegar, required to be kept on board such ships.

At places where there are local marine boards, such inspection must be made under their direction, and also, in any special cases, under the direction of the Board of Trade. If such inspection be made at places where there are no local marine boards, it must be made under the direction of the Board of Trade.<sup>5</sup>

2. Every such inspector, if required by timely notice in writing from the master, owner, or consignee, must make his inspection three days at least before the ship proceeds to sea, and if the result of the inspection be satisfactory, he may not again make inspection before the commencement of the voyage, unless he has reason to

<sup>1</sup> The following rules apply to all sea-going ships registered in the United Kingdom (except such as are exclusively employed in fishing on the coasts of the United Kingdom, and such as belong to the Trinity House, the Commissioners of Northern Light Houses, or the Port of Dublin Corporation, and also except pleasure yachts), and also to all ships registered in any British possession, and employed in trading or going between any place in the United Kingdom, and any place or places not situate in the possession in which such ships are registered. (17 and 18 Vict. c. 104, s. 109.) A medical inspector must be registered under the Medical Act, 1858, as, otherwise, no certificate given by him will be valid. (21 and 22 Vict. c. 90, s. 37.)

<sup>2</sup> 17 and 18 Vict. c. 104, s. 226.

<sup>4</sup> *Ib.* s. 226.

<sup>3</sup> *Ib.* s. 226.

<sup>5</sup> *Ib.* s. 226.

suspect that some of the articles inspected have been subsequently removed, injured, or destroyed.<sup>1</sup>

3. If such inspector is of opinion that any of the articles carried in any ship which he is required to inspect are deficient in quantity or quality, or are placed in improper vessels, he must signify the same, in writing, to the chief officer of Customs of the port where such ship is lying, and also to the master, owner, or consignee thereof.

In such case, the master of the ship must, before he can proceed to sea, obtain from the same, or some other medical inspector, a certificate to the effect that such deficiency has been supplied or remedied, or that such improper vessels have been replaced by proper vessels, as the case may require.<sup>2</sup>

#### IV. *Powers.*

Every such inspector has, for the purposes of such inspection, the following powers:<sup>3</sup>—

1. He may go on board any ship, and may inspect any of the articles on board thereof before mentioned, not unnecessarily detaining or delaying her from proceeding on any voyage.

2. He may enter and inspect any premises, the entry or inspection of which appears to him to be requisite for the purpose of the report which he is directed to make.

3. He may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine for such purpose, and may require answers or returns to any inquiries he thinks fit to make.

4. He may require and enforce the production of all books, papers, or documents which he considers important for such purpose.

5. He may administer oaths, or may, in lieu thereof, require the persons examined by him to make and subscribe a declaration of the truth of the statements made by them under such examination.

6. He may seize and detain any person wilfully impeding him in the execution of his duty, whether on board ship or elsewhere, until such offender can be taken before some justice of the peace, or other officer having proper jurisdiction.

<sup>1</sup> 17 and 18 Vict. c. 104, s. 226.

<sup>2</sup> *Id.* s. 226.

<sup>3</sup> *Id.* ss. 14, 15, 16, and 226.

V. *Medicines, &c., to be carried.*

The Board of Trade from time to time issue and publish scales of medicines and medical stores suitable for different ships and voyages, and also books containing instructions for dispensing the same, and the owners of every ship navigating between the United Kingdom and any place out of the same, are required to provide, and cause to be kept on board such ships a supply of medicines and medical stores, in accordance with the scale appropriate to such ship, and also a copy of one of the books above mentioned.<sup>1</sup>

*Sec. VII.—Medical Inspector of Seamen.*

I. *By whom appointed.*

A medical inspector of seamen may be appointed by the local marine board, at any port where there is a local marine board, and at other ports in the United Kingdom, by the Board of Trade.<sup>2</sup>

II. *Remuneration.*

The amount of remuneration is fixed by the Board of Trade, and paid out of the Mercantile Marine Fund.<sup>3</sup>

III. *Duty.*

It is the duty of such inspector, on application by the owner or master of any ship, to examine any seaman applying for employment in such ship, and to give to the superintendent of the mercantile marine office a report, under his hand, stating whether such seaman is in a fit state for duty at sea.<sup>4</sup>

IV. *Appointment at ports abroad.*

In British possessions out of the United Kingdom, the governor or other officer administering the government for the time being, has the power of appointing medical inspectors of seamen, of charging fees for inspections, when applied for, and of determining the remuneration to be paid to such inspectors.<sup>5</sup>

<sup>1</sup> 30 and 31 Vict. c. 124, s. 4.

<sup>2</sup> 30 and 31 Vict. c. 124, s. 10.

<sup>3</sup> *Ib.* s. 10.

<sup>4</sup> *Ib.* s. 10.

<sup>5</sup> *Ib.* s. 10.



*Sec. VIII.—Medical Inspector of Passenger Ships.**I. What is a Passenger Ship.*

The term "passenger ship" here signifies every description of sea-going vessel, whether British or foreign, carrying more than fifty passengers, or a greater number of passengers than in the proportion of one statute adult to every thirty-three tons of the registered tonnage of such ships, if propelled by sails, or than one statute adult to every twenty tons, if propelled by steam, upon any voyage from the United Kingdom to any place out of Europe, and not being within the Mediterranean Sea, and upon every colonial voyage.<sup>1</sup>

*II. Appointment.*

No such passenger ship is allowed to clear out, or proceed to sea until the passengers, crew, medicines, &c., have been inspected by some medical practitioner, to be appointed by the emigration officer at the port of clearance.<sup>2</sup>

*III. Duties.*

1. A medical inspector of passenger ships must inspect all the passengers and crew about to proceed in the ship. Such inspection must take place, either on board the vessel, or, at the discretion of the emigration officer at the port of clearance, at such convenient place on shore, before embarkation, as he may appoint.<sup>3</sup>

2. No such passenger ship may clear out, or proceed to sea, until such medical inspector has certified that none of the passengers or crew appear, by reason of any mental or bodily disease, unfit to proceed, or likely to endanger the health or safety of the other persons about to proceed in such ship; and the emigration officer may prohibit the embarkation of any person so afflicted, or require him to be re-landed, if embarked, or require all persons on board to be re-landed, for the purification of the ship.<sup>4</sup>

3. Every passenger ship must carry a supply of medicines, medical comforts, instruments, and other things proper and necessary for diseases and accidents incident to sea voyages, and for the medical treatment of the passengers during the voyage, including

<sup>1</sup> 26 & 27 Vict. c. 51, s. 3; 18 & 19 Vict. c. 119, s. 3.

<sup>2</sup> 18 & 19 Vict. c. 119, s. 44.

<sup>3</sup> *Ib.* s. 44.

<sup>4</sup> *Ib.* s. 44.

an adequate supply of disinfecting fluid or agent, together with printed or written directions for the use of the same, respectively, and such medicines, &c., must be good in quality, and sufficient in quantity for the probable exigencies of the intended voyage, and properly packed; and no such ship may clear out, or proceed to sea, until the medical inspector has inspected all the medicines, &c., and certified to the emigration officer at the port of clearance that the ship contains a sufficient supply of such medicines, &c.<sup>1</sup>

*Sec. IX.—Prison Surgeon.*<sup>2</sup>

*I. Appointment.*

1. It is provided, by the statute 28 and 29 Vict. c. 126, that a surgeon, duly registered under the Medical Act, 1858, shall be appointed to every gaol, house of correction, bridewell, or penitentiary, by the justices in sessions assembled.<sup>3</sup>

2. The expression “justices in sessions assembled” means as follows:<sup>4</sup>—

1st. As respects any prison belonging to any county, except as hereinafter mentioned, or to any riding, division, hundred, or liberty of a county having a separate court of quarter sessions, the justices in quarter sessions assembled.

2nd. As respects any prison belonging to any county divided into ridings or divisions, and maintained at the common expense of such ridings or divisions, the justices of the county assembled at gaol sessions.

3rd. As respects any prison belonging to the City of London, or the liberties thereof, the court of the Lord Mayor and Aldermen.

4th. As respects any prison belonging to any municipal borough, the justices of the borough, assembled at sessions, to be held by them at the usual time of holding quarterly sessions of the peace, or at such other time as they may appoint.

5th. As respects any prison belonging to any city, district,

<sup>1</sup> 18 and 19 Vict. c. 119, s. 44.      <sup>2</sup> See, generally, Glen's Prison Acts, 1865.

<sup>3</sup> 28 and 29 Vict. c. 126, ss. 4 and 10. As to who might appoint before this Act, see *R. v. Lancaster*, 10 Q. B. 962; *Hammond v. Peacock*, 1 Exch. 41.      <sup>4</sup> *Id.* s. 6.

borough, or town having a separate prison jurisdiction, and not hereinbefore mentioned, the justices or other persons having power, at law, to make rules for the government of such prison.

3. Any right, vested by Act of Parliament or charter in the council of any municipal borough, of appointing a surgeon to the prison of such borough, is not affected by this Act,<sup>1</sup> nor is the tenure of office, or the salary, or the superannuation allowance of prison surgeons appointed before 1st Feb., 1866, altered thereby.<sup>2</sup>

## II. *Salary.*

The amount of salary is fixed by the justices in sessions assembled, but in the case of a municipal borough, the approval of the council must be obtained.<sup>3</sup>

## III. *Tenure of Office.*

The prison surgeon holds his office during the pleasure of the justices in sessions assembled.<sup>4</sup>

## IV. *Superannuation.*

1. Before a prison surgeon can obtain a superannuation allowance he must—

1. Have held such office for not less than twenty years, and be not less than sixty years of age; *or*,

2. He must have become incapable, from confirmed sickness, age, or infirmity, or injury received in actual execution of his duty, of executing his office in person, and such sickness, age, infirmity, or injury, must be certified by a medical certificate; *and*,

3. There must be a report of the visiting justices, testifying to his good conduct during his period of service, and recommending a grant to be made to him (such report to be made at some sessions of the justices, holden not less than two months before the sessions at which the grant is made).

2. When these conditions have been complied with, the justices in sessions assembled may grant to him, having regard to his length of service—

1. An annuity, by way of superannuation allowance, not exceeding two-thirds of his salary and emoluments; *or*,

<sup>1</sup> 28 and 29 Vict. c. 126, s. 81.

<sup>2</sup> *Ib.* ss. 2 and 79.

<sup>3</sup> *Ib.* s. 14.

<sup>4</sup> *Ib.* s. 14.

2. A gratuity, not exceeding the amount of his salary and emoluments for one year.
3. The gratuity or annuity so fixed is payable out of the rates lawfully applicable to the payment of the salaries of prison officers; but where the power to levy such rates is vested in a different body from the justices, the consent of such last-mentioned body must be obtained to the amount of superannuation allowed.<sup>1</sup>

#### V. *General Duties and Rights.*

1. It is the duty of the surgeon to visit the prison, at least twice in every week, and oftener, if necessary, and to see every prisoner in the course of the week. He must, also, daily visit the prisoners, if any, confined in punishment cells; and visit daily, and oftener, if necessary, such of the prisoners as are sick, and, when necessary, direct any prisoner to be removed to the infirmary.<sup>2</sup>
2. He must, once at least in every three months, inspect every part of the prison, and enter in his journal the result of his inspection.<sup>3</sup>
3. Whenever he has reason to believe that the mind of a prisoner is, or is likely to be injuriously affected by the discipline or treatment, he must report the case in writing to the gaoler, together with such directions as he may think proper.<sup>4</sup>
4. He must call the attention of the chaplain to any prisoner who appears to require his special notice.<sup>5</sup>
5. He may, in case of danger or difficulty which appears to him to require it, call in additional medical assistance.<sup>6</sup>
6. He must perform no serious operation, without a previous consultation with another medical practitioner, except under circumstances not admitting of delay.<sup>7</sup>
7. He must, in case of sickness, necessary engagement, or leave of absence, to be given by the visiting justices, appoint a substitute, to be approved of by the visiting justices.<sup>8</sup>
8. He must examine every criminal prisoner, as soon as possible after his admission, and enter in a book, to be kept by the gaoler, a record of the state of health of the prisoner, and any observations he may deem it expedient to add.<sup>9</sup>
9. He must examine every prisoner, previously to his being

<sup>1</sup> 28 and 29 Vict. c. 126, s. 15.

<sup>2</sup> *Ib.* sch. i, s. 86.

<sup>3</sup> *Ib.* sch. i. s. 88, and see "*Journal*," *post*, p. 143, s. 2.

<sup>4</sup> *Ib.* sch. i. s. 89.

<sup>5</sup> *Ib.* sch. i. s. 89.

<sup>6</sup> *Ib.* sch. i. s. 90.

<sup>7</sup> *Ib.* sch. i. s. 90.

<sup>8</sup> *Ib.* sch. i. s. 92.

<sup>9</sup> *Ib.* sch. i. s. 9.



removed to any other prison, and must certify, by an entry in the nominal record, that he is free from any illness that renders him unfit for removal, before such prisoner can be so removed.<sup>1</sup>

10. He must examine every prisoner, previously to his discharge, and if such prisoner be labouring under any acute or dangerous distemper, he may order him to be detained until, in his opinion, such discharge is safe, unless the prisoner require to be discharged.<sup>2</sup>

11. He may allow the admission into the prison of spirituous liquor for the use of a prisoner, by writing an order, specifying the quantity to be admitted; or of tobacco, by writing an order for the same;<sup>3</sup> or of wine or beer for a convicted criminal, by a written order, specifying the quantity, and the name of the prisoner for whose use it is intended.<sup>4</sup>

12. He may order such diet as he may deem necessary, for prisoners under his care.<sup>5</sup>

13. He may order epileptic prisoners, or prisoners labouring under diseases requiring assistance or supervision in the night, to be placed with not fewer than two other male prisoners.<sup>6</sup>

14. He may direct the bedclothes to be aired, changed, and washed, as often as he pleases.<sup>7</sup>

15. He may order the hair of a female prisoner to be cut, on the ground of health.<sup>8</sup>

16. He may certify that any prisoner sentenced to hard labour of either class is unfit for hard labour of that class, and such prisoner will thereupon be put to hard labour of a lower class, or obtain a partial or total remission, according to the certificate.<sup>9</sup>

17. He must, from time to time, examine the prisoners sentenced to hard labour, during the time of their being so employed, and must enter in his journal the name of any prisoner whose health he thinks to be endangered by a continuance at hard labour of either class, and thereupon, such prisoner must not again be employed at such class of hard labour, until the surgeon certifies that he is fit for such employment.<sup>10</sup>

18. Where a woman has been imprisoned, under the Contagious Diseases Acts,<sup>11</sup> he may, at the time of her discharge from

<sup>1</sup> 28 & 29 Vict. c. 126, sch. i. s. 10.

<sup>2</sup> *Ib.* sch. i. s. 10.

<sup>3</sup> *Ib.* sch. i. ss. 13 & 14.

<sup>4</sup> *Ib.* sch. i. s. 22.

<sup>5</sup> *Ib.* sch. i. s. 21.

<sup>6</sup> *Ib.* sch. i. s. 26.

<sup>7</sup> *Ib.* sch. i. s. 27.

<sup>8</sup> *Ib.* sch. i. s. 29.

<sup>9</sup> *Ib.* sch. i. ss. 34 & 35.

<sup>10</sup> *Ib.* sch. i. s. 37.

<sup>11</sup> 29 & 30 Vict. c. 35, and 32 & 33 Vict. c. 96.



24. Upon the death of a prisoner, the duty of giving notice to the coroner falls upon the gaoler, and not upon the surgeon.<sup>1</sup>

#### VI. *Duty at Executions.*

1. Judgment of death is now executed within the walls of the prison in which the offender is confined at the time of such execution.<sup>2</sup>

2. It is the duty of the prison surgeon to be present at every such execution.<sup>3</sup>

3. He must, as soon as may be after the execution, examine the body of the offender, and ascertain the fact of death, and sign and deliver to the sheriff a certificate in the following form :<sup>4</sup>—

“ I, A.B., the surgeon [*or as the case may be*] of the [*describe prison*], hereby certify that I this day examined the body of C. D., on whom judgment of death was this day executed in the [*describe same prison*], and that, on that examination, I found that the said C. D. was dead.

“ Dated this       day       , (Signed) A. B.”<sup>5</sup>

4. A prison surgeon who wilfully signs any such certificate, knowing it to be false, is liable to imprisonment for any term not exceeding two years.<sup>6</sup>

#### VII. *Journal.*

1. It is the duty of every prison surgeon to keep, in the prison, a journal, and to enter therein the following particulars, in the English language :—

1. An account, to be entered day by day, of the state of every sick prisoner, the name of his disease, a description of the medicines and diet, and any other treatment which he may order for such prisoner.<sup>7</sup>

2. The result of each quarterly inspection of the prison,<sup>8</sup> recording any observations he may think fit to make on any want of cleanliness, drainage, warmth, or ventilation ; any bad quality of the provisions, any insufficiency of clothing or bedding, and deficiency in the quantity, or defect in the quality of the water, or any other cause which may affect the health of the prisoners.<sup>9</sup>

<sup>1</sup> 28 & 29 Vict. c. 126, sch. i. s. 75.

<sup>2</sup> 31 & 32 Vict. c. 24, s. 2.    <sup>3</sup> *Ib.* s. 3.

<sup>4</sup> *Ib.* s. 4.    <sup>5</sup> *Ib.* sch.    <sup>6</sup> *Ib.* s. 9.

<sup>7</sup> 28 & 29 Vict. c. 126, sch. i. s. 87.

<sup>8</sup> See *ante*, p. 140.

<sup>9</sup> 28 & 29 Vict. c. 126, sch. i. s. 88.

3. If, under circumstances not admitting of delay, he perform a serious operation, without previous consultation with another medical practitioner,<sup>1</sup> he must enter a record of such circumstances.<sup>2</sup>

4. On the death of a prisoner, the following particulars must be entered :—

*a.* At what time the deceased was taken ill.

*b.* When the illness was first communicated to the surgeon.

*c.* The nature of the disease.

*d.* When the prisoner died.

*e.* An account of the appearances after death, in cases where a post-mortem examination is made.

*f.* Any special remarks that appear to be required.<sup>3</sup>

5. The name and residence of his substitute, whenever appointed.<sup>4</sup>

6. Any order for the admission of spirituous liquors, or tobacco.<sup>5</sup>

7. Any order for the supply of wine, beer, or other fermented liquor, for the use of a convicted criminal prisoner.<sup>6</sup>

8. The name of any prisoner, whose health he thinks to be endangered by a continuance at hard labour of either class.<sup>7</sup>

9. A daily record of all directions he has given in relation to any prisoner, with the exception of orders for the supply of medicines, or directions in relation to such matters as are carried into effect by himself, or under his superintendence.

Under this head, a separate column must be kept, in which entries are to be made by the gaoler, stating, in respect of each direction, the fact of its having been or not having been complied with, accompanied by such observations (if any) as the gaoler may think fit to make, and the date of the entry.<sup>8</sup>

2. This journal must be laid before the justices in sessions assembled, at such time as they may appoint, once at least in each quarter of a year, and must be signed by the chairman of the sessions, in proof of the same having been there produced.<sup>9</sup>

<sup>1</sup> See *ante*, p. 140, s. 6.

<sup>2</sup> 28 & 29 Vict. c. 126, sch. i. s. 90.

<sup>3</sup> *Ib.* sch. i. s. 91.

<sup>4</sup> *Ib.* sch. i. s. 92.

<sup>5</sup> *Ib.* sch. i. s. 15.

<sup>6</sup> *Ib.* sch. i. s. 22.

<sup>7</sup> *Ib.* sch. i. s. 37.

<sup>8</sup> *Ib.* sch. i. s. 42.

<sup>9</sup> *Ib.* sch. i. s. 100.



VIII. *Status and Liabilities.*

1. A prison surgeon is not a subordinate officer,<sup>1</sup> but he is bound to obey the directions of the gaoler, in matters not regulated by the Prison Act, 1865.<sup>2</sup> The gaoler has authority to enforce on him the due execution of his duties.<sup>3</sup>

2. He may have free ingress to, and egress from the prison, at all hours of the day and night.<sup>4</sup>

3. If he is insulted or threatened by a prisoner, he should report such prisoner to the gaoler, who has power to inquire into the offence, and punish the offender.<sup>5</sup>

4. He may not employ a subordinate officer in any private capacity.<sup>6</sup>

5. He is subject to the ordinary penalties for introducing spirituous liquors, &c., into the prison,<sup>7</sup> except such as he may order in writing, or require for the use of the infirmary;<sup>8</sup> and for carrying letters into or out of the prison;<sup>9</sup> and, if guilty of either offence, forfeits, in addition, his office, and all arrears of salary due to him.<sup>10</sup>

6. While acting as prison surgeon, he is deemed, by virtue of his appointment, a constable.<sup>11</sup>

7. The visiting justices have authority to inquire into his conduct, and any complaints made against him, and to report thereon to the justices in sessions assembled.<sup>12</sup>

8. The inspector may, by letter, call the attention of the visiting justices to any complaint he may have to make against the surgeon.<sup>13</sup>

9. A surgeon who does not reside within the prison must regularly enter in a book, to be kept by the gaoler for the purpose, the date of each visit, and must sign each such entry.<sup>14</sup>

10. Where a surgeon resides within the prison, his family must quit possession of the house or apartments, on his death, as must he and his family, if he be suspended or removed from his office. In either case, on neglect or refusal to comply with this regulation, any two justices may, after forty-eight hours' notice, by warrant, direct any constable to enter such house or apartments, and deliver up possession to the prison authority.<sup>15</sup>

<sup>1</sup> 28 & 29 Vict. c. 126, sch. i. s. 104.

<sup>2</sup> *Ib.* sch. i. s. 93.

<sup>3</sup> *Ib.* sch. i. s. 69.

<sup>4</sup> *Ib.* sch. i. s. 5.

<sup>5</sup> *Ib.* sch. i. s. 57.

<sup>6</sup> *Ib.* sch. i. s. 69.

<sup>7</sup> *Ib.* s. 38.

<sup>8</sup> *Ib.* sch. i. s. 13.

<sup>9</sup> *Ib.* s. 39.

<sup>10</sup> *Ib.* s. 39.

<sup>11</sup> *Ib.* sch. i. s. 63.

<sup>12</sup> *Ib.* s. 53.

<sup>13</sup> *Ib.* s. 22.

<sup>14</sup> *Ib.* sch. i. s. 101.

<sup>15</sup> *Ib.* s. 16.

11. He may be suspended or removed from his office by the justices in sessions assembled.<sup>1</sup>

#### IX. *Convict Prisons abroad.*

1. The appointment of surgeons and assistant-surgeons to convict prisons at Bermuda, Gibraltar, or at any other colony or place in her Majesty's dominions abroad, is vested in one of her Majesty's principal Secretaries of State, who may also remove them at his pleasure. The governor of the colony may also, should he think it necessary so to do, suspend any such surgeon or assistant-surgeon so appointed, until the pleasure of the Secretary of State is made known to him.

2. The Secretary of State has power to establish regulations for the conduct and duties of all the officers of the prison.

3. The surgeon must, within the first three weeks after the commencement of each successive calendar year, submit to the governor of the colony a general report on such matters relating to the prison and the convicts therein as one of her Majesty's principal Secretaries of State, or the governor of the colony may, from time to time, direct.<sup>2</sup>

#### *Sec. X.—Factory Surgeon.*

##### *I. For what purpose appointed.*

In all factories which come within any of the following definitions, viz., buildings in which is carried on the manufacture of cotton, wool, hair, silk, flax, hemp, jute, or tow,<sup>3</sup> (except rope works,) <sup>4</sup> print works, and bleaching and dyeing works,<sup>5</sup> lace factories,<sup>6</sup> buildings in which is carried on the manufacture of earthenware (except bricks and tiles, not being ornamental tiles), lucifer matches, percussion caps or cartridges, or the employment of

<sup>1</sup> 28 & 29 Vict. c. 126, s. 14.

<sup>2</sup> See, generally, 22 Vict. c. 25.

<sup>3</sup> 7 & 8 Vict. c. 15. See also 42 Geo. III. c. 73; 3 & 4 Will. IV. c. 103; 4 & 5 Will. IV. c. 1; 10 & 11 Vict. c. 29; 13 & 14 Vict. c. 54; and 16 & 17 Vict. c. 104.

<sup>4</sup> 9 & 10 Vict. c. 40.

<sup>5</sup> 33 & 34 Vict. c. 62. See also 9 & 10 Vict. c. 18, and the Acts repealed by the first-mentioned Act.

<sup>6</sup> 24 & 25 Vict. c. 117.

paper-staining, or fustian cutting<sup>1</sup>, blast-furnaces, copper or iron mills or foundries, buildings in which is carried on the manufacture of machinery, articles of metal, india-rubber or gutta-percha, paper, glass, or tobacco, or the process of letterpress printing or book-binding, or any building in, on, or within the precincts of which fifty or more persons are employed in any manufacturing process;<sup>2</sup> it is illegal to employ, except under special circumstances, children or young persons under a certain age, without having previously obtained a certificate as to their strength and appearance from a duly qualified medical practitioner, specially appointed for the particular factories, or a particular district, and known as a "certifying surgeon."

## II. *Appointment.*

1. Certifying surgeons may be appointed by any one of the inspectors of factories, who must, in every such appointment, specify the factories or district for which each surgeon is appointed, and may, from time to time, annul any such appointment, and in like manner, make another or others.<sup>3</sup>

2. Every appointment of a certifying surgeon, and every order annulling such appointment, may be revoked by the Secretary of State, on appeal made to him for either purpose.<sup>4</sup>

## III. *Qualifications.*

1. Every certifying surgeon must be actually practising surgery or medicine, and must be also registered under the Medical Act; for, although the appointment is not one which unregistered persons are prohibited from holding, by Section 36, yet, by Section 37, no certificate required by any Act is valid, unless the person signing the same be registered under the Act.

2. No surgeon, being the occupier of a factory, or having a beneficial interest in any factory, may be appointed a certifying surgeon, but, according to the wording of the Act, the prohibition does not apply to a physician or apothecary, not being a surgeon.<sup>5</sup>

## IV. *Duties.*

1. An inspector of factories has power to make, from time to time, regulations for the guidance of the certifying surgeons.<sup>6</sup>

<sup>1</sup> 27 & 28 Vict. c. 48.

<sup>3</sup> 7 & 8 Vict. c. 15, s. 8.

<sup>4</sup> *Ib.* s. 8.

<sup>2</sup> 30 & 31 Vict. c. 103.

<sup>5</sup> *Ib.* s. 8.

<sup>6</sup> *Ib.* s. 8.





and , residing in , has been personally examined by me this <sup>1</sup> day of , one thousand eight hundred and , and that the said child has the ordinary strength and appearance of a child of at least eight years of age, and that I believe the real age of the said child to be at least eight years; and that the said child is not incapacitated, by disease or bodily infirmity, from working (daily) in the above-named factory, for the time allowed by this Act.

“(Signed) , Certifying Surgeon.

“In the case of silk mills, the word eleven must be substituted for the word eight, in the above form.”

8. Form of certificate of age for a young person.<sup>2</sup>

[*To be written or printed on coloured paper.*]

“Factories Regulation Act. Victoria, c. .

“No. .

“Certificate of age for a young person to be employed in the factory of , situated at , in .

“I, , of , duly appointed a certifying surgeon, do hereby certify that , son (or daughter) of and , residing in , has been personally examined by me, this day of , one thousand eight hundred and , and that the said young person has the ordinary strength and appearance of a young person of at least thirteen years of age; and that the said young person is not incapacitated, by disease or bodily infirmity, from working daily in the above-named factory, for the time allowed by this Act.

“(Signed) , Certifying Surgeon.”

9. If the certifying surgeon refuse to grant either of the above certificates, he must write the word “refused” in the column of the register where the numbers of the certificates are required to be inserted, and give a certificate in the following form:—

“Factories Regulation Act. Victoria, c.<sup>3</sup> .

“Certificate refused.

“I, , of , duly appointed a certifying surgeon,

<sup>1</sup> The day of the month must be written in words, and not in figures.

<sup>2</sup> The notes to, and instructions as to the filling up of the previous form apply equally to the present one.

<sup>3</sup> See the notes to the form in sec. 7, *ante*.

do hereby declare that . . . , son (*or* daughter) of . . . , residing in . . . , has been personally examined by me this . . . day of . . . , one thousand eight hundred and . . . , and that, in my opinion, the said (*child or* young person) has not the ordinary strength and appearance [*of a child of at least eight years of age (or of a young person of at least thirteen years of age) or (or and) is incapacitated, by disease and bodily infirmity, from working daily in a factory, for the time allowed by this Act*].<sup>1</sup>

“ (Signed) . . . , Certifying Surgeon.”

10. A certifying surgeon, on receiving notice in writing from the occupier or his principal agent, that an accident has occurred, which has caused bodily injury to any person employed in a factory for which he has been appointed to grant certificates of age, and that it has been of such a nature as to have prevented the person so injured from returning to his work in the factory the following morning, must, with the least possible delay, proceed to the said factory, and make a full investigation as to the nature and cause of such bodily injury, and must also, within the next twenty-four hours, send to the inspector of the district a report thereof.<sup>2</sup>

For the purpose of such investigations, the certifying surgeon has the same power, authority, and protection as an inspector, and has, also, power to enter any room in any building to which the injured person may have been removed.<sup>3</sup>

#### V. *Remuneration.*

1. The fees to be paid to a certifying surgeon may either be regulated by a special agreement, in writing, between the occupier of the factory and such surgeon, or they will, on the requisition of the occupier of the factory, be fixed by an inspector.<sup>5</sup>

2. Where the fees are fixed by an agreement between the occupier of a factory and the certifying surgeon, such agreement must be in writing, and the terms thereof must be in conformity with such regulations for the guidance of the surgeons as have been made by the inspector of the district, and it must also be

<sup>1</sup> The words within brackets must be in the handwriting of the certifying surgeon, who must insert the reason of his refusal to be either on account of deficient age, or of bodily infirmity, or both, as the case may be.

<sup>2</sup> 7 & 8 Vict. c. 15, s. 23.

<sup>3</sup> *Ib.* ss. 12 and 13.

countersigned by the inspector, in token of such conformity. If these regulations are complied with, all penalties which may be incurred by any party, for breach of such agreement, may be recovered, summarily, before any two or more justices of the peace, provided that the place of hearing be not more than five miles from the place where the offence was committed, and in default of payment, the goods and chattels in the factory where the occupier is convicted may be distrained.<sup>1</sup> No such agreement is liable to any stamp duty.<sup>2</sup>

3. Where the fees are fixed by an inspector—

*a.* They must not, in any case where the surgeon examines more than one person, exceed 1s. for each person presented to him at the factory, by the occupier or his agent, to be examined, together with 6d. for every half-mile that the distance of the factory from the residence of the surgeon exceeds one mile.

*b.* Such fees, including mileage, may not be less than 1s., and may, in no case, exceed 5s. for any one visit, except when upon such visit the surgeon examines more than ten persons so presented to him, in which case he may claim 6d. for each person examined, instead of all other fees.

*c.* Where a factory is situated within the distance of one mile from the residence of the certifying surgeon, the fee for such factory must not exceed 2s. 6d. for each visit, except when, upon such visit, he examines more than five persons so presented to him, in which case he may claim 6d. for each person examined, instead of all other fees.

*d.* Not more than 6d. may be allowed to a certifying surgeon for any certificate which he may be allowed by an inspector to sign or issue otherwise than at the factory where the person is to be employed.

*e.* The occupier of the factory must pay such fees to the certifying surgeon, at the time of signing such certificates, unless some other time has been appointed by the inspector.<sup>3</sup>

4. For every investigation into the causes and extent of an accident at a factory, the certifying surgeon is entitled to a fee not exceeding 10s., or such part thereof, not being less than 3s.,

<sup>1</sup> 7 & 8 Vict. c. 15, ss. 12, 45, 46.

<sup>2</sup> *Ib.* s. 12.

<sup>3</sup> *Ib.* s. 13.

as the inspector of the district may consider a reasonable remuneration to him for his trouble.<sup>1</sup>

5. The following is the scale of fees for investigating and reporting on accidents, sanctioned by the Secretary of State for the Home Department :—

*a.* For the examinations and report on any accident which do not require the surgeon to travel a greater distance than one mile, 3s.

*b.* For the examinations and report on any accident which may require the surgeon to travel a greater distance than one mile, and not more than two miles, 4s.

*c.* For the examinations and report on any accident which may require the surgeon to travel a greater distance than two miles, and not more than three miles, 5s.

*d.* If any examination or report shall require the surgeon to travel a greater distance than three miles, he shall be allowed a further sum of 6d. for each half-mile that such distance shall exceed three miles.

*e.* In any intricate case, or when any peculiar circumstances shall arise, either in making the inquiry, or framing the report, the inspectors may recommend a higher fee than those above stated, so that no fee exceeding 10s. be assigned for any one accident, and provided the reason for recommending such higher fee be stated by the inspector.

6. The distances mentioned in the preceding paragraph apply to the number of miles which the surgeon is compelled to travel to make the examinations, taking the shortest way in his power, and refer only to the ground which he has to pass over in proceeding to the works, together with any additional distance which he may have to travel to examine the person injured. The distance which he has travelled in returning, either from the investigation at the works, or from the examination of the person injured, is not to be added to the mileage, nor must the distance travelled to the place where the injured person is examined be added, unless he has had to travel a greater distance than he would have done in returning from the investigation at the works direct to his residence.

<sup>1</sup> 7 & 8 Vict. c. 15, s. 23.



*Sec. XI.—Medical Officer of the Privy Council.*<sup>1</sup>*I. Appointment.*

The Privy Council may appoint, and remove, at their pleasure, a medical officer.

*II. Duties.*

It is the duty of such medical officer to report, from time to time, to the Privy Council in relation to any matters concerning the public health, or such matters as may be referred to him for that purpose, and in or before the month of March in each year, to report to the Privy Council the proceedings had and taken under "The Public Health Act, 1858,"<sup>2</sup> during the preceding year, ending on the 31st day of December. All such reports are laid before both Houses of Parliament.

*III. Remuneration.*

The Commissioners of her Majesty's Treasury may direct such salary as they think fit to be paid to such medical officer, out of such monies as shall be provided by Parliament, provided it do not exceed £1,500 per annum.

*Sec. XII.—Medical Officers in Parishes and Unions.*<sup>3</sup>

The medical officers in parishes and unions, comprising the district medical officer, and the workhouse medical officer, are appointed under and by virtue of orders issued by the Poor-law Board, which is authorized, by Act of Parliament,<sup>4</sup> to direct the guardians to appoint paid officers, with such qualifications as the Board may think necessary, and to define and direct their duties, direct the mode of appointment, determine their continuance in

<sup>1</sup> See 21 & 22 Vict. c. 97, ss. 4, 5, and 6, made perpetual by 22 & 23 Vict. c. 3.

<sup>2</sup> 21 & 22 Vict. c. 97, with which is incorporated 18 & 19 Vict. c. 116, "The Diseases Prevention Act, 1855."

<sup>3</sup> See, generally, Archbold's "Parish Officer," 4th Ed., by Paterson, 1864; Glen's "Poor-law Board Orders," 7th Ed., 1871; Walsh's "Poor Law Surgeon's Guide."—(Renshaw.)

<sup>4</sup> 4 & 5 Will. IV. c. 76.

office, or dismissal, and regulate the amount of salary, and time, and mode of payment.

The orders of the Poor-law Board have been issued at various dates, and are not always of general application, but are, in many cases, directed to particular unions or places. The following rules and regulations affecting medical officers are, except where the contrary is expressly stated, compiled from the consolidated order of July 24th, 1847, the general orders of 25th May, 1857, and 10th December, 1859, the order of 4th April, 1868, and from explanations as to the construction of various points in such orders, given in letters of instruction directed by the Poor-law Board to particular unions or parishes; they apply to most of the unions and parishes in England and Wales, but inquiry should be made whether the above-mentioned orders have been applied to, and remain in force, in any particular union or parish with reference to which information may be sought.

The following provisions apply equally to the district medical officer, and the workhouse medical officer.

#### *I. Appointment.*

1. The guardians of every parish and union must, whenever it may be requisite, or whenever a vacancy may occur, appoint a medical officer for the workhouse, and a district medical officer, and also such assistants as the guardians, with the consent of the Poor-law Board, may deem necessary for the efficient performance of the duties of the said offices.

2. In case the guardians fail, for twenty-eight days after receipt of a requisition of the Poor-law Board in that behalf, to appoint, either originally or on a vacancy, any such officer, the Poor-law Board may, at any time after the expiration of the said term of twenty-eight days, if they think fit, by order under their seal, appoint a fit person to be such officer, and determine the salary or remuneration to be paid to him by such guardians, and the person so appointed may recover such salary or remuneration, by action in a county or other court of law, against such guardians, and has all the same powers, rights and privileges, and must discharge all the same duties, and incurs the same responsibilities, as if the appointment had been duly made by the said guardians.<sup>1</sup>

3. As a rule, the same person may be appointed medical officer for the workhouse, and also for a district of the union or parish.

<sup>1</sup> 31 & 32 Vict. c. 122, s. 7.

4. The appointment must be made by a majority of the guardians present at a meeting of the board, consisting of more than three guardians, or by three guardians, if no more be present, and every such appointment must, as soon as the same has been made, be reported, by the clerk, to the Poor-law Board.

5. The guardians may not, by advertisement, or other public notice, printed or written, invite tenders for the supply of medicines, or for the medical attendance on the paupers of the union or parish, unless such advertisement or notice shall specify the district or place for which such supply of medicines and such attendance is required, together with the amount of salary or other remuneration.

6. The guardians may require candidates to attend personally before the board for examination, and may pay their reasonable expenses.

7. In any case of emergency, or under any special circumstances, the guardians may appoint one or more medical officers to act temporarily for such time, or upon such terms as the Poor-law Board may approve.

8. A medical officer paid by a salary may not be appointed a guardian.<sup>1</sup>

## II. *Qualifications.*

1. No person can hold the office of medical officer, unless he be duly registered under the Medical Act, 1858, and be qualified, by law, to practise both medicine and surgery, in England and Wales. Such qualification must be established by the production, to the board of guardians, of a diploma, certificate of a degree, licence, or other instrument, granted or issued by competent legal authority in Great Britain or Ireland, testifying to the medical or surgical, or medical and surgical qualification or qualifications of the candidate for such office.

2. If the candidate was in practice as an apothecary on August 1, 1815, this is considered equivalent to a certificate to practise, from the Society of Apothecaries, London.

3. The candidate is also considered duly qualified if he be registered under the Medical Act, and possess a warrant or commission as surgeon or assistant-surgeon, in the Navy, or East

<sup>1</sup> 5 & 6 Vict. c. 57, s. 14.

India Company, or as surgeon, or assistant-surgeon, or apothecary in the Army, dated previous to August 1, 1826.

### III. *Tenure of Office.*

1. The guardians may, at their discretion, suspend from the discharge of his duties any medical officer, and in case of every such suspension, the guardians must forthwith report the same, together with the cause thereof, to the Poor-law Board, and if the Poor-law Board remove the suspension of such officer by the guardians, he may forthwith resume the performance of his duties.

2. The Poor-law Board may, either upon or without complaint from the guardians, remove a medical officer whom they deem unfit for or incompetent to discharge the duties of such office, or who refuses or wilfully neglects to obey and carry into effect any of the rules, orders, regulations, or by-laws of the said board, and may require another fit and proper person to be appointed in his room.<sup>1</sup> This power is entirely discretionary, and may be exercised without assigning any cause, or calling upon the officer to answer any charge, or giving him any notice or opportunities for making a defence.<sup>2</sup>

3. In the case of any medical officer who holds his office for a specified term, the guardians may provide for the continuance of such officer, or appoint his successor, within the three calendar months next before the expiration of such term.

### IV. *Substitutes.*

1. Every medical officer is bound to visit, and attend personally, as far as may be practicable, the poor persons entrusted to his care, and is responsible for the attendance on them.

2. Every medical officer must, as soon as may be after his appointment, name to the guardians some medical practitioner only, registered under the Medical Act, 1858, to whom application for medicines or attendance may be made in the case of his absence from home, or other hindrance to his personal attendance, and who will supply the same at the cost of such medical officer, and the name and residence of every medical practitioner so named must be forwarded, by the clerk, to each relieving officer, and to the overseers of every parish in the district of such medical officer.

<sup>1</sup> 4 & 5 Will. IV. c. 76, s. 48.

<sup>2</sup> *Re Teather*, 19 L. J., M. C. 70.



3. A medical officer may not expressly delegate to his assistant in his general practice the duties of his office, but he may name such assistant his substitute, as he may, also, a partner, or another medical officer of the union, or a guardian.

4. The medical officer is held, by the Poor-law Board, responsible for the skill and diligence of the person named by him as substitute.

5. The guardians may object to the appointment of any person as substitute of whom they may not approve.

6. The medical officer may at any time rescind his nomination of a substitute, and name another in his stead, under similar regulations.

#### V. *General Duties.*

It is the duty of every medical officer, appointed in a parish or union—

1. To give to the guardians, when required, any reasonable information respecting the case of any pauper who is or has been under his care; to make any such written report, relative to any sickness prevalent among the paupers under his care, as the guardians or Poor-law Board may require of him; and to attend any meeting of the board of guardians, when specially requested by them to do so. ❀

2. To give to the guardians, whenever they propose to apprentice a child under the age of fourteen years, residing in the union, or in the workhouse, a certificate in writing as to the fitness, in regard to bodily health and strength, of such child to be bound apprentice to the proposed trade.

3. To give a certificate, under his hand, in every case, when required so to do, to the guardians, or the relieving officer of his union, or the pauper on whom he is attending, of the sickness of such pauper, or other cause of his attendance.

4. In keeping the books prescribed by the orders of the Poor-law Board, to employ, as far as is practicable, the terms used or recommended in the regulations and statistical nosology issued by the Registrar-General; and also to show when the visit or attendance made or given to any pauper was made or given by any person employed by himself.

5. Where a sum of money has been insured in any society, payable on the death of a child under the age of ten years, for

the funeral expenses of such child, and where the child has been attended immediately before its death by the medical officer of any union, on account of such union, such officer must deliver to the parents or friends of the deceased child, upon their application, a certificate stating the probable cause of death of the child, without charging any fee for the same; and if such child has not been attended by such medical officer, or by any qualified medical practitioner, the medical officer of the union in which such child shall have been resident must deliver a similar certificate to the parents or friends of the deceased child, upon their application, for which he is entitled to receive, from the parties applying for the same, the fee of one shilling.<sup>1</sup>

6. If a medical officer attend the workhouse, or other officers of the union or parish, he is entitled to require them to remunerate him for his attendance, as private patients.

7. The guardians of any parish or union may, at any time, employ one of their medical officers to make inquiry into, and report upon the sanitary state of their union or parish, or any part thereof, and they are authorized to pay to the medical officer for such services a reasonable compensation out of their common fund.<sup>2</sup>

8. A medical officer who, with intent to cause any poor person to become chargeable to any parish to which such person was not then chargeable, conveys any poor person out of the parish for which he acts, or causes or procures any poor person to be so conveyed, or gives, directly or indirectly, any money, relief, or assistance, or affords, or procures to be afforded, any facility for such conveyance, or makes any offer or promise, or uses any threat to induce any poor person to depart from such parish, is liable to a penalty not exceeding £5, and not less than £2, on conviction before any two justices, if, in consequence of such conveyance or departure, any poor person becomes chargeable to any parish to which he was not then chargeable.<sup>3</sup>

## VI. *Remuneration.*

1. The guardians are to pay to the medical officers such salaries

<sup>1</sup> 21 & 22 Vict. c. 101, s. 2.

<sup>2</sup> 23 & 24 Vict. c. 77, s. 14.

<sup>3</sup> 9 & 10 Vict. c. 66, s. 6.

or remuneration as the Poor-law Board may, from time to time, direct or approve.

2. The guardians may, with the approval of the Poor-law Board, pay to such officers a reasonable compensation, on account of extraordinary services, or other unforeseen circumstances connected with their duties, or the necessities of the union or parish.

3. The salary is payable up to the day on which they may cease to hold the office, and no longer.

4. A medical officer who is suspended, and afterwards dismissed by the Poor-law Board, is not entitled to any salary from the date of such suspension, and if he be temporarily suspended, by reason of his services not being required, he is not entitled to any salary, during such temporary suspension.

5. Where a medical officer is called on, by order of a person legally qualified to make such order, to attend any woman in or immediately after childbirth, or where, under circumstances of difficulty or danger, without any order, he visits any such woman actually receiving relief, or whom the guardians may subsequently decide to have been in a destitute condition, he is entitled to be paid by the guardians, for his attendance and medicines, a sum not less than 10s., nor more than 20s., as the guardians may agree with such officer.

6. This fee does not become due for attendance in a case of a miscarriage, or in consequence of symptoms of premature labour, or where the woman is only four or five months gone with child. The delivery of a woman, of twins, does not entitle the medical officer to a double fee for his attendance.

7. If a medical officer attend a pauper, without an order, and on his own responsibility, and the overseers or guardians know of, and do not repudiate such attendance, they are liable for his reasonable charges, if such liability be not inconsistent with the terms of the contract entered into between such medical officer and the said overseers or guardians. Where a pauper had his leg accidentally fractured in one parish, and was conveyed to the next house, in an adjoining parish, and was confined there, and attended by the surgeon who usually attended the parish poor, with the knowledge of the overseer, it was held that the surgeon might recover for the expenses of the cure, from the overseer, for there was not any obligation against the parish where the accident happened to pay these expenses, and the overseer's knowing of,

and not repudiating the surgeon's attendance, was equivalent to a request.<sup>1</sup>

8. A medical officer who, in compliance with any regulation of the General Board of Health, performs any medical service on board of any vessel, is entitled to charge extra for any such service, at the general rate of his allowance for his services for the union or place for which he has been appointed, and such charges are payable by the captain of the vessel, on behalf of the owners, together with any reasonable expenses for the treatment of the sick; and in case of dispute in respect of such charges, if the charges do not exceed £20, such dispute may be determined summarily, as in the case of seamen's wages, at the place where the dispute arises.<sup>2</sup>

### VII. *Superannuation.*

1. The guardians may, at their discretion, with the consent of the Poor-law Board, grant to any medical<sup>3</sup> officer, whose whole time has been devoted to the service of the union or parish, and who has become incapable of discharging the duties of his office with efficiency, by reason of permanent infirmity of mind or body, or of old age, upon his resigning, or otherwise ceasing to hold his office, an annual allowance not exceeding, in any case, two-thirds of his then salary, whether computed according to a fixed sum, or to a poundage, and may charge such allowance to the same fund as that to which such salary would have been charged, had he continued in office.<sup>4</sup>

2. This allowance is payable in trust, only, for such officer, and is not assignable, or chargeable with his debts or liabilities.<sup>5</sup>

3. No officer is entitled to such allowance on the ground of age, unless he has completed the full age of sixty years, and served for twenty years, at least, as officer of some parish or union.<sup>6</sup>

4. Where such officer, at the time of vacating his office, is employed solely in the service of the guardians, he is not prevented from receiving a superannuation allowance by reason of his having been employed under another public authority,

<sup>1</sup> *Lamb v. Bunce*, 4 Maul. and S. 275.

<sup>2</sup> 18 & 19 Vict. c. 116, s. 12, and see *ante*, page 133.

<sup>3</sup> See 4 & 5 Will. IV. c. 76, s. 109.

<sup>4</sup> 27 & 28 Vict. c. 42, s. 1.

<sup>5</sup> *Ib.* s. 2.

<sup>6</sup> *Ib.* s. 3.



provided that such last-mentioned employment shall have ceased not less than three years prior to his application for such allowance.<sup>1</sup>

5. Service in a dissolved union may be reckoned in the grant of allowance in a new union, and the Poor-law Board may award compensation to any person deprived of office by means of such dissolution.<sup>2</sup>

6. The board of guardians of any union or parish, and the board of management of any district, may also, with the consent of the Poor-law Board, and under and subject to the above-mentioned provisions, grant to any medical officer of such union, district, or parish, an annual allowance, notwithstanding he may not have devoted his entire time to the services of the union, district, or parish, but no such allowance may be granted on the ground of permanent infirmity of mind or body, unless a Poor-law inspector, or some person in that behalf, authorized by the Poor-law Board, has first certified that, in his opinion, the officer to whom the allowance is about to be granted has, by reason of such infirmity, become incapable of performing the duties of his office with efficiency. The allowance is payable out of the common fund of the union or district, or out of the poor-rate of the parish, exclusively.<sup>3</sup>

#### VIII. *Privileged Communications.*

A medical officer of a parish or union is not liable to an action for defamation, in consequence of anything contained in any communication made by him in the discharge of the duties of his office, if made *bonâ fide*, and without malice. Where a wine merchant had tendered for the supply of sherry to a union, and, while the samples and tender were under consideration, the medical officer used the following language to the guardians, "No matter what price is given for wine in Naas (the name of the union), it will be South African sherry," in an action by the wine merchant against the medical officer, for slander, it was held that the communication was privileged, inasmuch as the defendant had used the words *bonâ fide*, and honestly, in the discharge of his duty, and without malice, and believing them to be true.<sup>4</sup>

<sup>1</sup> 30 & 31 Vict. c. 106, s. 19.

<sup>2</sup> *Ib.* s. 20.

<sup>3</sup> 33 & 34 Vict. c. 94.

<sup>4</sup> *Murphy v. Kellett*, 13 Ir. C. L. Rep., N. S., 488.

*Sec. XIII.—District Medical Officer.**I. Appointment.<sup>1</sup>*

1. Partners cannot be appointed joint medical officers of a district, but the fact that they are partners is no objection to their being appointed, individually, as medical officers of distinct districts in the same, or in any other union.

2. A medical officer may be transferred from one district to another by the guardians, without vacating his appointment thereby. The transfer can only be made with his consent.

*II. Qualifications.<sup>2</sup>*

1. If it be impracticable, consistently with the proper attendance on the sick poor, for the guardians to procure a person residing within the district in which he is to act, and duly qualified by law to practise both medicine and surgery in England and Wales, to attend on the poor in such district, or if the only person resident within such district and so qualified has been dismissed from office by the Poor-law Board, or is unfit or incompetent to hold the office of medical officer, then, and in such case, the guardians must cause a special minute to be made and entered in the usual record of their proceedings, stating the reasons which, in their opinion, make it necessary to employ a person not so qualified, and must forthwith transmit a copy of such minute to the Poor-law Board for their consideration; and the said Board may permit the employment by such guardians of any person duly registered under the Medical Act, 1858, although such person be not so qualified.

2. If a person possessing one qualification only be appointed as above, and afterwards cease to hold such office altogether, he cannot be re-appointed to the same or any other district, except under similar circumstances and provisions.

*III. Tenure of Office.<sup>3</sup>*

1. Every district medical officer duly qualified according to the regulations of the Poor-law Board at the time of his appointment, and then being, or within two months after his appointment becom-

<sup>1</sup> See, also, *ante*, p. 154.

<sup>2</sup> See, also, p. 155.

<sup>3</sup> See, also, p. 156.

ing, resident within the district for which he may be appointed to act, holds his office until he dies, or resigns, or is proved insane by evidence deemed sufficient by the Poor-law Board, or becomes legally disqualified to hold such office, or is removed by the Poor-law Board, or ceases to reside within the district.

2. If such medical officer be not fully qualified, or not resident within his district at the time of his appointment, or within two months thereof, but afterwards complete his qualification, or become resident within such district, as the case may be, the guardians may, upon such completion of his qualification or becoming resident, respectively, after giving such notice as would be necessary in respect of an appointment in case the office were vacant, pass a resolution empowering such officer to hold his office for the time specified above; and if they transmit a copy of such resolution to the Poor-law Board, and if that Board consent, such officer, being so duly qualified and resident, is entitled thenceforth to hold such office accordingly.

3. If the guardians elect a district medical officer, whether duly qualified as aforesaid or otherwise, not residing within his district at the time of his appointment, and not becoming resident therein within two months after such appointment, or elect as such officer a person not duly qualified as aforesaid, but qualified by law to practise medicine, and residing within his district at such time, the guardians may employ as a district medical officer such person not residing within his district, or such person not duly qualified as aforesaid (as the case may be) for such time only as the Poor-law Board shall approve of or direct;<sup>1</sup> and when the guardians make any such election, they must cause a special minute to be made and entered on the usual record of their proceedings, stating the reasons which, in their opinion, make it necessary to employ such person not residing within the district in which he is to act, or not duly qualified as aforesaid, and forthwith transmit a copy of such minute to the said Board, for their consideration.

4. Where a change in the extent of the district of a medical officer is deemed necessary for the more convenient supply of medical relief to the poor, or otherwise for the general benefit of the union, and such officer shall decline to acquiesce therein, the

<sup>1</sup> The sanction is usually given for one year only.



guardians may, with the consent of the Poor-law Board, but not otherwise, and after six months' notice in writing, signed by their clerk, given to such medical officer, determine his office, and may appoint a successor at any time subsequent to their receiving the consent of the Poor-law Board. Such officer may, however, be re-appointed, if otherwise eligible.

5. When any medical officer ceases to hold his office under any of the above provisions, the guardians must proceed to appoint a successor, according to the regulations of the Poor-law Board, unless, by reason of any change in the extent of the district, such office, as previously constituted, may become unnecessary.

#### IV. *Area and Population of Districts.*

1. The guardians may, from time to time, divide the union into districts for medical relief, with the consent of the Poor-law Board; and on any change in the division into districts, or in the assignment of medical officers to such districts, the clerk must report such change to the Poor-law Board, for their approbation.

2. The guardians may not assign to any medical officer a district which exceeds in extent the area of 15,000 statute acres, or which contains a population exceeding the number of 15,000 persons, according to the then last enumeration of the population published by authority of Parliament, but this is not to be held to imply that no district is objectionable, or that every district which is within these limits will be sanctioned by the Poor-law Board.

3. If it be impracticable, consistently with the proper attendance on the sick poor, for the guardians to divide the union into districts containing, respectively, an area and population less than is specified above, then, and in such case, the guardians must cause a special minute to be made and entered in the usual record of their proceedings, stating the reasons which, in their opinion, make it necessary to form a district exceeding the said limits, and must transmit a copy of such minute to the Poor-law Board, for its consideration, and if the said Board signifies its approval thereof to such guardians, then, and in such case, but not otherwise, such guardians may proceed to assign the said district to a medical officer.

4. The limitation as to area does not apply to any district situate wholly or in part in Wales, but no such district may be assigned to any medical officer residing more than seven miles



from any part of any parish included within such district, unless such district shall have been specially sanctioned by the Poor-law Board.

V. *Special Duties and Regulations.*<sup>1</sup>

1. Every district medical officer must attend duly and punctually upon all poor persons requiring medical attendance, within the district of the union assigned to him, and, according to his agreement, must supply the requisite medicines, and medical and surgical appliances to such persons, whenever he may be lawfully required to furnish such attendance, medicines, &c., by a written or printed order of the guardians, or of a relieving officer of the union, or of an overseer.

2. He must visit, at their own homes, such sick paupers as might be seriously inconvenienced by coming to the medical officer.

3. A medical officer may not employ a midwife as his substitute in midwifery cases.

4. The order of the guardians, relieving officer, or overseer, must be implicitly obeyed, whether it be to attend a member of a sick club, a hired servant, or a person in receipt of other relief; but the medical officer should report any special circumstances, as that the person is able to procure medical aid from his own resources, or that he refuses to adopt the remedies prescribed for his disease, at the next ensuing meeting of the guardians, and act upon their directions.

5. He must supply such medicines as he is bound to provide by the terms of his appointment, in such a state that they admit of being carried, but he may require the paupers to return the bottles, boxes, &c. He is not bound to forward the medicines supplied to the residences of the paupers, as it is the duty of the relieving officer to provide the means of conveyance, if the paupers are unable to fetch or send for such medicines.

6. On the exhibition to him of a ticket according to the annexed form, and on application made on behalf of the party to whom such ticket was given, it is his duty to afford such medical attendance and medicines as he would be bound to supply if he had received, in each case, an order from the guardians to afford such attendance and medicines.

<sup>1</sup> See, also, *ante*, p. 157.

*Form of Ticket.*

		Union.
Date		
Good until the	day of	18
Name of Pauper		
Residence of Pauper		
Name of Medical Officer		
Residence		
Usual hour at which he is at home		

[The guardians must, from time to time, furnish the medical officer with a list of permanently sick and disabled paupers within the district.]

7. He must inform the relieving officer of any poor person whom he may attend without an order.

8. He must make a return to the guardians, at each ordinary meeting, in a book prepared according to a form prescribed by the Poor-law Board, and insert therein, the date of every attendance, or when medicines were furnished, the name, age, and residence of the pauper, the nature of the disease, the necessaries ordered to be given to the patient, the state or termination of the case, and any general observations, noting where the attendances were given, and whether given by a substitute or other person, instead of the medical officer.<sup>1</sup>

9. He may, however, with the consent of the guardians, but not otherwise, make the entries which he is directed to make in such book, on detached sheets of paper, according to the same form, and cause the same to be laid before the guardians, at every ordinary meeting, instead of such book; and the guardians must, in that case, cause such sheets to be bound up, at the end of the year.

10. He must visit, once a quarter,<sup>2</sup> every pauper lunatic in his district, not in an asylum, or a hospital registered, or a house licensed for the reception of lunatics, and within seven days after the end of every such quarter, he must prepare and sign a list, according to a form prescribed by statute, to be furnished to him

<sup>1</sup> See general rule No. 4, *ante*, p. 157.

<sup>2</sup> The several quarters must be reckoned as ending on March 31, June 30, September 30, and December 31.

by the guardians, of all such lunatics, and must state therein whether, in his opinion, all or any of such lunatics are, or are not properly taken care of, and may, or may not properly remain out of an asylum, and must deliver or send such list to the clerk to the guardians, within the said seven days. He is entitled to a fee of 2s. 6d. for each such quarterly visit to any pauper not being in a workhouse, which sum is to be paid by the guardians. If he fail to comply with this rule, he is liable, for every offence, to a penalty not exceeding £20, and not less than £2.<sup>1</sup>

11. If he have notice that any pauper resident in his district is, or is deemed to be a lunatic, and a proper person to be sent to an asylum, he must, within three days after obtaining such knowledge, give notice thereof, in writing, to the relieving officer, or, if there be no relieving officer, to one of the overseers, under a penalty not exceeding £10.<sup>2</sup>

#### VI. *Special remuneration.*<sup>3</sup>

1. No salary of a district medical officer may include the remuneration for operations and services of the following classes, performed by such medical officer, in that capacity, for any outdoor pauper; but such operations and services are paid for by the guardians, according to the following rates:—

1. Treatment of compound fractures of the thigh	}	£ s. d.		
2. Treatment of compound fractures, or compound dislocation of the leg . . . . .		5	0	0
3. Amputation of leg, arm, foot, or hand . . . . .				
4. Operation for strangulated hernia . . . . .				
5. Treatment of simple fractures, or simple dislocations of the thigh or leg, including fracture of the neck of the thigh-bone, or of the malleolus externus; but not of the knee-cap, tarsus, metatarsus, or toes . . . . .		3	0	0
6. Treatment of dislocations, or simple or compound fractures of the arm, including dislocation of the shoulder, elbow, or wrist, and fracture of the humerus, ulna, and radius; but not fracture of the ribs, clavicle, scapula, acromion, elbow, carpus, metacarpus, fingers, or thumbs . . . . .		1	0	0

<sup>1</sup> 16 & 17 Vict. c. 97, s. 66.

<sup>2</sup> *Ib.* ss. 67 and 70.

<sup>3</sup> See, also, *ante*, p. 158.

2. These rates include payment for the supply of all kinds of apparatus and splints, and cover the attendance after the operation.

3. Cases in which the patient does not survive the operation thirty-six hours, or in which he does not receive several subsequent attendances, are only paid for at half these rates.

4. Except in cases of sudden accident immediately threatening life, the officer is not entitled to receive such remuneration for any amputation, unless he has obtained, at his own cost, the advice of some member of the Royal College of Surgeons of England, or some Fellow or Licentiate of the Royal College of Physicians of London, before performing such amputation, and unless he also produce, before or after the operation, to the guardians, a certificate from such member, or such fellow or licentiate, stating that, in his opinion, it was right and proper that such amputation should be then performed.

5. If several of the above-mentioned fees become payable with respect to the same person at the same time, and in consequence of the same cause or injury, the officer is entitled to only one of such fees, and, if they be unequal, to the highest.

6. In any surgical case not specially provided for as above, which has presented peculiar difficulty, or required and received long attendance from the officer, the guardians may make to the said officer such reasonable extra allowance as they may think fit, and the Poor-law Board may approve.

7. In any special case of childbirth, in which the district medical officer has attended, under the circumstances previously described, and where great difficulty has occurred in the delivery,<sup>1</sup> or long subsequent attendance in respect of some puerperal malady or affection, has been requisite, such medical officer is entitled to receive the sum of £2.

#### *Sec. XIV.—Workhouse Medical Officer.*

##### *I. Tenure of Office.<sup>2</sup>*

1. Every medical officer of a workhouse, duly qualified at the time of his appointment according to the regulations of the Poor-law Board then in force, holds his office until he dies, or resigns,

<sup>1</sup> See s. 12, "Medical officers in parishes and unions," tit., "Remuneration" (5), *ante*, p. 159.

<sup>2</sup> See, also, *ante*, p. 156.



or is proved to be insane, by evidence which the Poor-law Board may deem sufficient, or becomes legally disqualified to hold such office, or is removed by the Poor-law Board.

2. When any workhouse medical officer ceases to hold his office under any of the above provisions, the guardians must proceed to appoint a successor, according to the regulations of the Poor-law Board.

## II. *Special duties and regulations.*<sup>1</sup>

1. Every workhouse medical officer must attend at the workhouse, at the periods fixed by the guardians, and also when sent for by the master or matron.

2. He must attend duly and punctually upon all poor persons in the workhouse requiring medical attendance, and, according to his agreement, supply the requisite medicines, and medical and surgical appliances to such persons.

3. He may use force in order to perform a necessary operation on a pauper, only when he can certify that the said pauper is not of sound mind.

4. He must examine the state of the paupers, on their admission into the workhouse, and if he find that any such pauper be labouring under any disease of body or mind, he must give directions to the master as to the ward in which such pauper should be placed.

5. He must give directions and make suggestions as to the diet, classification, and treatment of the sick paupers, and paupers of unsound mind, and report to the guardians any pauper of unsound mind in the workhouse, whom he may deem to be dangerous or fit to be sent to a lunatic asylum.

6. He may direct, in writing, such diet for any individual pauper as he may deem necessary, and the master must obey such direction until the next ordinary meeting of the guardians, when he must report the same in writing to the guardians. He may, also, at any time certify that he deems a temporary change in the diet essential to the health of the paupers, or of any class thereof.

7. He must give all necessary instructions as to the diet or treatment of children, and women suckling children (on which points the matron is bound to consult him), and vaccinate such of the children as may require vaccination.

<sup>1</sup> See, also, *ante*, p. 157.

8. He must report in writing to the guardians—

*a.* Any defect in the diet, drainage, ventilation, warmth, or other arrangements of the workhouse.

*b.* Any excess in the number of any class of inmates which he may deem detrimental to health.

*c.* Any defect which he may observe in the arrangements of the infirmary or sick-wards, and in the performance of their duties by the nurses of the sick. .

*d.* Any other matter which, in the discharge of the duties of his office, he may consider to require the attention of the guardians.

*e.* Any recommendations relating to any of the matters aforesaid which he may think it right to submit to the guardians.

9. He must keep a book termed "The Workhouse Medical Officers' Report Book" (to be supplied by the guardians), in which he must enter in writing, duly and punctually, and under the correct dates, all the above-mentioned reports.

10. He must cause this book to be delivered to the clerk to the guardians in sufficient time to allow it to be laid before the board of guardians at the ordinary meeting held at or next following the date of the report, and to be produced to the visiting committee, and to the inspectors of the Poor-law Board, when they may require to see it.

11. He must make a return to the guardians, at each ordinary meeting, in a book prepared according to a form prescribed by the Poor-law Board, and insert therein the date of every attendance on a sick pauper; the nature of his disease; the date of his admission to, and discharge from, the sick-ward; the dietary on which he is placed, and the extras ordered; the termination of the case; and, in the event of death, the apparent cause thereof.

12. He must enter in the commencement of such book, according to a form prescribed by the Poor-law Board, the proper dietary for the sick paupers in the house, in so many different scales as he may deem expedient, and a copy of such dietary must be hung up in the infirmary or sick-ward.

13. He must enter on a card, to be affixed at or near the head of the bed of every patient upon whom he may be in attendance, all medical or other extras which he may deem necessary to be supplied.

14. He must report in writing to the Poor-law Board the case

of every sudden and every accidental death which may occur in the workhouse, within twenty-four hours after he shall receive information of the same, and the cause of the death, so far as he is able to explain it. The master is bound to give him immediate notice of the death of any pauper in the workhouse.

15. He must specially report, in writing, to the guardians, on or about the 1st day of January, and on or about the 1st day of July, in each year; upon the several matters set forth in the following statement:—

*“Statement of the Medical Officer for the Workhouse.*

“To the Guardians of the Poor of the, &c.

Union or Parish,

Workhouse.

“Statement of the medical officer for the above-named workhouse for the half-year ended on the                      day of                      , 18                      , in answer to the following inquiries in reference to the said workhouse:—

“1. Is there sufficient ventilation and warmth?

“2. Has the accommodation during the preceding six months for the several classes of sick been sufficient?

“3. Are the arrangements for cooking and distribution of food, as regards the sick, satisfactory?

“4. Is the nursing satisfactorily performed?

“5. Is there a sufficient supply of towels, vessels, bedding, clothing, and other conveniences, for the use of the sick inmates?

“6. Are the medical appliances sufficient, and in good order?

“Are there any water or rack-bedsteads? and, if so, are they sufficient in number, and in good order?

“7. Are the lavatories and baths sufficient, and in good order?

“8. Are the supply and distribution of hot and cold water sufficiently provided for?

“(Signed)

Medical Officer,

“At

“This                      day of                      18                      .”

These reports must be entered in, or preserved with the medical officers' report book.

16. He must visit, every quarter, the pauper lunatics in the workhouse, and within seven days after the end of every such quarter, prepare and sign a list, according to a form prescribed by statute, to be furnished to him by the guardians, stating whether, in his opinion, the workhouse is or is not sufficient for the accommodation of the lunatics detained therein, and whether or not the lunatics detained therein are proper persons to be kept in a workhouse, and must send or deliver the same to the clerk to the guardians, within the said seven days. If he fail to comply with this rule, he is liable, for every offence, to a penalty not exceeding £20, and not less than £2.<sup>1</sup>

17. He must give notice, in writing, to the relieving officer of the district in which the workhouse is situate, of the lunacy of any pauper in the workhouse, within three days after becoming acquainted with the lunacy of such pauper, if the pauper be also a proper person to be sent to an asylum. Otherwise, he must certify that such pauper is a proper person to be kept in the workhouse, and that the accommodation in the workhouse is sufficient for his reception; and he will be deemed to have knowledge that the pauper is a lunatic, and a proper person to be sent to an asylum, if such pauper, being a lunatic, or alleged lunatic, be detained in the workhouse beyond the period of fourteen days, without such certificate. A penalty not exceeding £10 may be inflicted for neglect of this duty.<sup>2</sup>

#### *Sec. XV.—Public Vaccinator.*<sup>3</sup>

##### *I. Appointment.*

1. It is the duty of the guardians, in unions and parishes, to submit to the Poor-law Board proposals for dividing such unions and parishes into vaccination districts, and, when such proposals have been approved, to enter into a contract with some duly

<sup>1</sup> 16 & 17 Vict. c. 97, s. 66; and 25 & 26 Vict. c. 111, s. 21; and see p. 166, n. 2, *ante*, and Glen's "Poor-law Board Orders," 7th Ed. p. 167.

<sup>2</sup> 16 & 17 Vict. c. 97, ss. 67 and 70; and 25 & 26 Vict. c. 111, s. 20.

<sup>3</sup> The laws relating to vaccination in England are now regulated by the Vaccination Act of 1867 (30 & 31 Vict. c. 84), which repeals all former Acts and sections of Acts relating to the same subject, viz., 3 & 4 Vict. c. 29; 4 & 5 Vict. c. 32; 16 & 17 Vict. c. 100; 21 & 22 Vict. c. 25, s. 7; 21 & 22 Vict. c. 97, s. 2, and



registered medical practitioner for the performance of vaccination of all persons resident within each district.<sup>1</sup>

2. This contract is subject to the approval of the Poor-law Board, and is not valid until approved of by them.<sup>2</sup>

3. Every such medical practitioner, so contracting, is termed the public vaccinator of the district.<sup>3</sup>

4. No two or more persons may act severally as vaccinators under contract, in any one and the same part or district of any union or parish.<sup>4</sup>

## II. *The Contract.*

1. The form of contract given in the Appendix,<sup>5</sup> with such modifications as the guardians, with the approval of the Poor-law Board, determine on, should be employed by the guardians in making contracts with public vaccinators.<sup>6</sup>

2. The contract should contain stipulations and conditions to secure the due vaccination of persons, the due transmission of the certificate of successful vaccination, and the fulfilment of all other provisions of the Vaccination Act, 1867, on the part of the public vaccinator.<sup>7</sup>

3. It should also provide all stations at which the vaccination is to be performed, other than the surgery or residence of the public vaccinator,<sup>8</sup> and at least one public station should be appointed in each district, except where the Privy Council, for reasons brought to its notice, may see fit, in regard of any particular district, to sanction a system of domiciliary vaccination.

4. Vaccination must not be appointed to be performed at any station oftener than once a week, except under special authorization from the Privy Council, or in so far as may be expedient at times when there is immediate danger of small-pox.

5. No part of the metropolis, or of any city or municipal

24 & 25 Vict. c. 59. It does not, however, abrogate any of the contracts which were in existence when the Act was passed.

The duties, qualifications, &c., of public vaccinators are defined by regulations issued from time to time by the Lords of her Majesty's Most Honourable Privy Council, under the authority of the Act (s. 4).

<sup>1</sup> 30 & 31 Vict. c. 84, ss. 1 and 2.

<sup>2</sup> *Ib.* s. 9.

<sup>3</sup> *Ib.* s. 3.

<sup>4</sup> Where no other reference is given, the regulation is extracted from an order issued by the Privy Council.

<sup>5</sup> Sec. 3, Form VI.

<sup>6</sup> Order of Poor-law Board, Feb. 15th, 1868.

<sup>7</sup> 30 & 31 Vict. c. 84, s. 7.

<sup>8</sup> *Ib.* s. 7.

borough, or town corporate, or town, can form by itself, or with any other rural place, a separate district for vaccination, except with the approval of the Privy Council, unless it contain an estimated population of at least 25,000 persons, or else be as much of the metropolis, borough, city, or town, as is, for purposes of vaccination, under the control of one board of guardians.

### III. *Qualifications.*

1. No person may be admitted as a contractor for vaccination who does not—

*a.* Possess the qualifications required for a district medical officer,<sup>1</sup> and

*b.* Produce a special certificate given by some public vaccinator, authorized by the Privy Council to act for the purpose, by whom he has been duly instructed or examined in the practice of vaccination, and all that relates thereto.<sup>2</sup>

Except where the Privy Council, for reasons brought to their notice, see fit, in particular cases, otherwise to allow.

2. The production of the special certificate, on occasion of the contract being made, may be dispensed with, if the certificate, or some other which the Privy Council judge to be of like effect, has been among the certificates or testimonials necessary for obtaining any diploma, licence, or degree, which the candidate possesses.

3. In respect of persons legally admitted to practise, before January 1st, 1860, the special certificate may be dispensed with, on condition that the contract, during one year from its making, continue subject to the approval of the Poor-law Board.

### IV. *Deputy.*

1. Any person qualified to be a contractor may, on the contractor's application, and under the same conditions as are appointed for the admission of a contractor, be admitted by the guardians or overseers to act as his occasional deputy.

2. If this admission be not part of the original contract, it must be notified by indorsement upon the contract; and at least fifteen days before it is intended to take effect, a copy of the proposed

<sup>1</sup> V. *ante*, pp. 155 and 162.

<sup>2</sup> Vaccinating stations for teaching and examination have been established in London, Birmingham, Bristol, Leeds, Liverpool, Manchester, Newcastle-on-Tyne, Sheffield, Exeter, Edinburgh, and Glasgow.

indorsement, together with all requisite evidence of the qualification of the person whom it is proposed to admit, must be transmitted to the Poor-law Board.

### V. *Remuneration.*

1. The contract for vaccination may only provide for payment in respect of the successful vaccination of persons, and the rate of payment for primary vaccinations must not be fixed, in such contract, according to a lower scale than the following, viz. :—

For every such vaccination done at an appointed station, situated at, or within one mile from the residence of the vaccinator, or in the workhouse of the union or parish, not less than . . . . . 1 6

For every such vaccination done at any station over one mile and under two miles distant from his residence, not less than . . . . . 2 0

For every such vaccination done at any station over two miles distant from his residence, not less than . . . . . 3 0

Distance to be measured according to the nearest carriage road.<sup>1</sup>

2. In respect of successful vaccinations performed elsewhere than at a station or in the workhouse as aforesaid, payment must be according to the terms specified in the contract, as approved of by the Poor-law Board.<sup>2</sup>

3. Where a district has been assigned to a vaccinator, he is not entitled to be paid a fee in respect of the vaccination or re-vaccination of any child or other person resident out of his district, except in case of a vacancy in the office of vaccinator in any adjoining district, or of the default of the vaccinator therein, where notice of such default has been given to him by the guardians, or when a relieving officer of his union or parish has, in writing, referred any child to him for vaccination.<sup>3</sup>

4. A public vaccinator may not charge any fee to the parent or other person for his certificate or duplicate certificate, nor for any vaccination done under his contract; nor is he entitled to payment under his contract for any vaccination in respect of which he may have been paid by the parent or other person for whom or on whom it has been performed; and if he has received

<sup>1</sup> 30 & 31 Vict. c. 84, s. 6.

<sup>2</sup> *Ib.* s. 6.

<sup>3</sup> *Ib.* s. 11.

payment under his contract, he is not entitled to recover payment for the vaccination from any other person.<sup>1</sup>

5. The Lords of her Majesty's Council, on reports made to them with regard to the number and quality of the vaccinations performed in the various vaccination districts of England, award from time to time allowances to such public vaccinators as they think fit, in addition to the payments received by them from guardians or overseers, but such allowances do not exceed, in any case, the rate of 1s. for each child whom the vaccinator has successfully vaccinated during the time to which the award relates.<sup>2</sup>

6. In cases where a public vaccinator is authorized to<sup>3</sup> and does re-vaccinate any person applying to him for that purpose, he is entitled to claim from the guardians, for every such case of successful re-vaccination, a sum amounting to two-thirds of the fee payable upon each case of successful primary vaccination.<sup>4</sup>

## VI. *Duties.*<sup>5</sup>

1. The public vaccinator must vaccinate, with all reasonable despatch, any child resident within his district, who is brought to him for that purpose by the parent, or other person having the custody of such child.<sup>6</sup>

2. He should, after performing the operation, order the parent, or other person bringing the child to him, to bring it again to him, or his deputy, upon the same day in the following week, that he may inspect it, and, if he see fit, take from such child lymph for the performance of other vaccinations.<sup>7</sup>

3. In the event of the vaccination being unsuccessful, he should, unless the child be not in a fit and proper state, direct such parent, or other person, to cause the child to be forthwith again vaccinated and inspected, as on the previous occasion.<sup>8</sup>

4. If he be of opinion that the child is not in a fit and proper state to be successfully vaccinated, he should forthwith deliver to the parent or other person having the custody of such child, a certificate under his hand, according to the following form, or to

<sup>1</sup> 30 & 31 Vict. c. 84, s. 22.

<sup>2</sup> *Ib.* s. 5.

<sup>3</sup> See "Duties," No. 14, *post*.

<sup>4</sup> 30 & 31 Vict. c. 84, s. 8.

<sup>5</sup> See also the "Form of Contract," *post*, Appendix, sec. 3, Form VI.

<sup>6</sup> 30 & 31 Vict. c. 84, s. 16. The child should be brought by the parent within three months after its birth, or by the person having the custody of such child, within three months after receiving such custody.

<sup>7</sup> *Ib.* s. 17.

<sup>8</sup> *Ib.* s. 17.



the like effect, that the child is then in a state unfit for successful vaccination :<sup>1</sup>—

“I, the undersigned, hereby certify that I am of opinion that \_\_\_\_\_, the child of \_\_\_\_\_, of \_\_\_\_\_, in the parish or township of \_\_\_\_\_, in the county or borough of \_\_\_\_\_, aged \_\_\_\_\_, is not now in a fit and proper state to be successfully vaccinated. I do hereby postpone the vaccination until the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.”<sup>2</sup>

“Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.

“(Signed) \_\_\_\_\_ A. B.,

“Public Vaccinator of the \_\_\_\_\_ Union or Parish.”

*Mem.—This is to be kept by the parent, or other person, to whom it is given.*<sup>3</sup>

This certificate remains in force for two months, and is renewable for successive periods of two months, until the vaccinator shall deem the child to be in a fit state for successful vaccination, when the child must, with all reasonable despatch, be vaccinated, and the certificate of successful vaccination given, if warranted by the result.<sup>4</sup>

5. He must examine the child, upon its being brought to him at the end of each such successive period, and give a certificate according to the last-mentioned form, so long as he may deem requisite, under the circumstances of the case.<sup>5</sup>

6. If he find that a child, whom he has three times unsuccessfully vaccinated, is insusceptible of successful vaccination, or that a child brought to him for vaccination has already had the small-pox, he must deliver to the parent, or other person, as aforesaid, a certificate under his hand, according to the following form :<sup>6</sup>—

“I, the undersigned, hereby certify that I have \_\_\_\_\_ times unsuccessfully vaccinated \_\_\_\_\_, the child of \_\_\_\_\_, of \_\_\_\_\_, in the parish or township of \_\_\_\_\_, in the county or borough of \_\_\_\_\_, aged \_\_\_\_\_, [or

<sup>1</sup> 30 & 31 Vict. c. 84, s. 18.

<sup>2</sup> This must not exceed two calendar months from the date of the certificate. See next section.

<sup>3</sup> 30 & 31 Vict. c. 84, sch. (B).

<sup>4</sup> *Ib.* s. 18.

<sup>5</sup> *Ib.* s. 19.

<sup>6</sup> *Ib.* s. 20. Where such certificate has been given, the child is not thenceforth required to be vaccinated.



registrar of births and deaths in his district, without any fee or reward.<sup>1</sup>

12. All vaccinations and inspections must be performed by him in person, or by some other contractor of the same union or parish acting for him, or by a deputy duly admitted.<sup>2</sup>

13. Where a public station has been provided for a district, no person resident within two miles thereof, and not being an inmate of the workhouse, may be vaccinated by him elsewhere than at such station, unless he be of opinion (which, if so, he must note in his register) that, for some special reason, the person whom he purposes to vaccinate cannot properly be vaccinated at the station.<sup>3</sup>

14. The performance of re-vaccination by him on persons applying to him for that purpose, must be limited, in each case, by the following conditions :—

(a). That, so far as he can ascertain, the applicant has attained the age of fifteen years, or, if during any immediate danger of small-pox, the age of twelve years, and has not before been successfully re-vaccinated.

(b). That, in his judgment, the proposed re-vaccination is not, for any sufficient medical reason, undesirable.

(c). That he can afford vaccine lymph for the purpose, without in any degree postponing the claims which are made on him for the performance of primary vaccination in his district.

## *Sec. XVI.—Medical Officer of Health.*

### *I. Appointment.*

1. Local boards of health may, from time to time, if they think fit, appoint a fit and proper person, being a legally qualified medical practitioner, to be and be called “the officer of health,” and may remove such officer, at their pleasure.

<sup>1</sup> 30 & 31 Vict. c. 84, s. 14.

<sup>2</sup> At the educational vaccinating stations, pupils and other candidates, aged not less than eighteen years, may, in the presence and under the direction of the public vaccinator authorized to grant certificates, take part in vaccinating.

<sup>3</sup> This does not apply to persons resident in the district, but beyond two miles from the station.

The same person may be appointed officer of health for two or more districts.<sup>1</sup>

2. In the metropolis, every vestry and district board must, from time to time, appoint one or more legally qualified medical practitioner or practitioners of skill and experience, to fill such office, and may remove such officer or officers, at their pleasure.<sup>2</sup>

3. In districts where the Towns' Improvement Clauses Act, 1847,<sup>3</sup> is incorporated with the Local Act, the commissioners, trustees, or other persons, or body corporate entrusted by the Local Act with powers for executing the purposes thereof, may, if they think fit, appoint a legally qualified medical practitioner, of competent skill and experience, to fill such office, subject to the approval of one of the principal Secretaries of State, and may, with the like approval, discontinue such office, or remove such officer.<sup>4</sup>

## II. *Duties.*

1. The duties of medical officers of health appointed by local boards are to be defined by such board, but they are usually the same as those required of such officers appointed in the metropolis, which are to inspect and report periodically upon the sanitary condition of their parish or district; to ascertain the existence of diseases, more especially epidemics, increasing the rate of mortality, and to point out the existence of any nuisance, or other local causes which are likely to originate and maintain such diseases, and injuriously affect the health of the inhabitants; and to take cognizance of the fact of the existence of any contagious or epidemic diseases, and to point out the most efficacious mode of checking or preventing the spread of such diseases; and also to point out the most efficient modes for the ventilation of churches, chapels, schools, lodging-houses, and other public edifices within the parish or district; and to perform any other duties of a like nature which may be required of them.<sup>5</sup>

2. The duties of such officers appointed in districts where the Towns' Improvement Clauses Act, 1847, is incorporated with the Local Act, are to ascertain the existence of diseases within the limits of the Local Act, especially epidemics and contagious diseases, and to point out any nuisances or other local causes likely

<sup>1</sup> 11 & 12 Vict. c. 63, s. 40.

<sup>2</sup> 18 & 19 Vict. c. 120, s. 132.

<sup>3</sup> 10 & 11 Vict. c. 34.

<sup>4</sup> *Ib.* s. 12.

<sup>5</sup> 18 & 19 Vict. c. 120, s. 132.



to cause and continue such diseases, or otherwise injure the health of the inhabitants, and to point out the best means of checking or preventing the spread of such diseases within the said limits, and also the best means for the ventilation of churches, chapels, schools, registered lodging-houses, and other public buildings within the said limits, and, from time to time, as required by the said commissioners, &c., to report to them upon the matters aforesaid, and to perform any other duties of a like nature, which may be required of them.<sup>1</sup>

### III. *Remuneration.*

1. Officers of health appointed by local boards of health, are paid such remuneration, by way of annual salary or otherwise, as the said local boards may, by order in writing, determine and appoint, and (in case of a joint appointment for two or more districts) in such proportions as the said boards may, by order in writing, appoint, and such remuneration is paid out of the general district rates.<sup>2</sup>

Any such officer, under colour of his office or employment, exacting, taking, or accepting any fee or reward, other than his proper remuneration, is thereby rendered incapable of thereafter holding or continuing in such office, and is liable to a penalty of £50.<sup>3</sup>

2. Officers of health appointed in the metropolis, are paid such salaries as the vestry or district board by which they were appointed may think fit.<sup>4</sup>

3. Officers of health appointed in districts where the Towns' Improvement Clauses Act, 1847, is incorporated with the Local Act, are paid, out of the rates levied under the Local Act, such salaries as the commissioners, &c., with the approval of one of the principal Secretaries of State, determine.<sup>5</sup>

<sup>1</sup> 10 & 11 Vict. c. 34, s. 12.

<sup>2</sup> 11 & 12 Vict. c. 63, s. 40, and 21 & 22 Vict. c. 98, s. 8.

<sup>3</sup> 11 & 12 Vict. c. 63, s. 38.

<sup>4</sup> 18 & 19 Vict. c. 120, s. 132.

<sup>5</sup> 10 & 11 Vict. c. 34, s. 12.

*Sec. XVII.—Visiting Surgeon, and Inspector of Hospitals, under the Contagious Diseases Acts.*

*I. Places to which Acts extend.*

The Contagious Diseases Acts, 1866 to 1869,<sup>1</sup> extend only to the neighbourhood of military and naval stations situate at the following places, viz.: Aldershot, Canterbury, Chatham, Colchester, Dover, Gravesend, Maidstone, Plymouth and Devonport, Portsmouth, Sheerness, Shorncliffe, Southampton, Winchester, Windsor, Woolwich, and the Curragh, Cork, and Queenstown in Ireland.<sup>2</sup>

*II. Visiting Surgeons, and Assistants.*

1. The Admiralty, or Secretary of State for War, may appoint a medical officer for each place to which the Acts apply, to be, during pleasure, visiting surgeon there, and may, from time to time, on the death, resignation, or removal from office of any visiting surgeon, appoint another such officer in his stead.<sup>3</sup>

2. The same authorities may, from time to time, as occasion requires, appoint a medical officer to be the assistant of any such visiting surgeon, with the like powers and duties.<sup>4</sup>

3. The appointments are published in the *Gazette*, and a copy of the *Gazette* containing a notice of the appointment is conclusive evidence of such appointment.<sup>5</sup>

*III. Inspector of Hospitals, and Assistant.*

The Admiralty and Secretary of State for War may, in like manner, appoint a medical officer, inspector of certified hospitals, and an assistant to such inspector, with like powers.<sup>6</sup>

These appointments also are published in the *Gazette*, and a copy of the *Gazette* containing a notice of either appointment is conclusive evidence of such appointment.<sup>7</sup>

*IV. Duties of, and Regulations respecting, Visiting Surgeons.*

1. A justice has power to order the periodical medical examina-

<sup>1</sup> 29 & 30 Vict. c. 35, and 32 & 33 Vict. c. 96.

<sup>2</sup> Act 1869, s. 10, and sch. i.

<sup>3</sup> Act 1866, s. 6.

<sup>4</sup> *Ib.* s. 6.

<sup>5</sup> *Ib.* s. 6.

<sup>6</sup> *Ib.* s. 7.

<sup>7</sup> *Ib.* s. 7.

tion of a woman who is a common prostitute, and such order is sufficient warrant for the visiting surgeon to conduct such examination accordingly.<sup>1</sup>

2. So likewise is a voluntary submission by any such woman, in writing, signed by her in the presence of, and attested by, the superintendent of police.<sup>2</sup>

3. The Admiralty or Secretary of State for War make regulations, from time to time, respecting the times, places, &c., of medical examinations at the particular places to which the Acts apply, and supply to the visiting surgeon of each place a copy of the regulations in force.<sup>3</sup>

4. The visiting surgeon must, having regard to such regulations and the circumstances of each case, at the first examination of each woman examined by him, and afterwards, from time to time, as occasion requires, prescribe the times and places at which she is required to attend again for examination, and, from time to time, give, or cause to be given, to each such woman a notice, in writing, in the following form :<sup>4</sup>—

“ To A. B., of . . . . . Take notice that, in pursuance of ‘ The Contagious Diseases Acts, 1866 to 1869,’ you are required to attend for medical examination as follows :  
[*here state times and places of examination.*]

“ Dated this . . . . . day of . . . . ., 18 . . . . .

“ (Signed) . . . . . E. F.,

“ Visiting Surgeon for . . . . .”<sup>5</sup>

5. If, on any such examination, the visiting surgeon find that the woman is affected with a contagious disease (*i.e.*, a venereal disease, including gonorrhœa),<sup>6</sup> he must sign a certificate, in the following form, in triplicate, and cause one of the originals to be delivered to the woman, and the others to the superintendent of police :<sup>7</sup>—

“ In pursuance of ‘ The Contagious Diseases Acts, 1866 to 1869,’ I hereby certify that I have this day examined A. B., of . . . . ., and that she is affected with a contagious disease, within the meaning of those Acts, and the certified hospital

<sup>1</sup> Act 1866, ss. 15 and 16.

<sup>4</sup> *Ib.* s. 19.

<sup>2</sup> *Ib.* s. 17.

<sup>5</sup> Act 1869, sch. ii. (J.)

<sup>7</sup> *Ib.* s. 20.

<sup>3</sup> *Ib.* s. 18.

<sup>6</sup> Act 1866, s. 1.

in which she is to be placed, under the said Acts, is the hospital.

“Dated this            day of            , 18 .

“ (Signed)            E. F.,

“ Visiting Surgeon for            .”<sup>1</sup>

6. If the visiting surgeon find that any woman attending for examination is in such a condition that he cannot properly examine her, but have reasonable grounds for believing that she is affected with a contagious disease, he may sign an order, in the following form, for her detention in a certified hospital until he can properly examine her, so that she be not so detained for a period exceeding five days:<sup>2</sup>—

“I hereby certify that A. B., on being examined by me this day, in pursuance of ‘The Contagious Diseases Acts, 1866 to 1869,’ was in such a condition that I could not properly examine her, and I have reasonable ground to believe that she is affected with contagious disease, within the meaning of those Acts, and the certified hospital in which she is to be placed, under the said Acts, is the            hospital.

“Dated this            day of            , 18 .

“ (Signed)            E. F.,

“ Visiting Surgeon for            .”<sup>3</sup>

7. If the reason that he cannot examine the woman be that she is drunk, he may sign an order, in the following form, for her detention, for a period not exceeding twenty-four hours, in any place where persons accused of being drunk and disorderly, or of offences punishable summarily, are usually detained:<sup>4</sup>—

“I hereby certify that A. B., on attending this day for examination, in pursuance of ‘The Contagious Diseases Acts, 1866 to 1869,’ was drunk, so that I could not properly examine her, and I have reasonable ground to believe that she is affected with contagious disease, within the meaning of those Acts, and I hereby order that she be detained in the lock-up [*or as the case may be*] at            , in accordance with the said Acts.

“Dated this            day of            , 18 .

“ (Signed)            E. F.,

“ Visiting Surgeon for            .”<sup>5</sup>

<sup>1</sup> Act 1869, sch. ii. (K.) .

<sup>2</sup> *Ib.* s. 3.

<sup>3</sup> *Ib.* sch. ii. (L.)

<sup>4</sup> *Ib.* s. 3.

<sup>5</sup> *Ib.* sch. ii. (M.)



8. If it be necessary that a woman should be detained for a period exceeding three months, the visiting surgeon for the place whence she came, or was brought, may be called upon to sign a certificate, in the following form, conjointly with the chief medical officer of the hospital in which she is detained :<sup>1</sup>—

“ *The Contagious Diseases Acts, 1866 to 1869.*”

“ We, the undersigned, hereby certify that the further detention, for medical treatment, of A. B., of \_\_\_\_\_, now an inmate of this hospital, is requisite.

“ Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, at the \_\_\_\_\_ hospital.

“ (Signed) \_\_\_\_\_ E. F.,

“ Visiting Surgeon for \_\_\_\_\_.”<sup>2</sup>

[or as the case may be]

“ G. H.,

“ Chief Medical Officer.”<sup>3</sup>

9. Where a woman has been imprisoned for the offence of absenting herself, or of refusing or neglecting to submit herself to examination, or of quitting a hospital without being discharged, or of refusing or neglecting, while in hospital, to conform to the regulations thereof, the visiting surgeon may, at the time of her discharge, be called upon to sign a certificate in the following form, to be delivered to the superintendent of police :<sup>4</sup>—

“ *The Contagious Diseases Acts, 1866 to 1869.*”

“ Whereas, under the above-mentioned Acts, A. B., of \_\_\_\_\_, was, on the \_\_\_\_\_ day of \_\_\_\_\_, convicted of the offence of \_\_\_\_\_, and has since been imprisoned for that offence in the gaol of \_\_\_\_\_, and is now discharged from imprisonment therein : Now, in pursuance of the said Acts, I hereby certify that she is now free from a contagious disease.

“ Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

“ (Signed) \_\_\_\_\_ E. F.,

“ Visiting Surgeon for \_\_\_\_\_.”<sup>5</sup>

10. Where a woman leaves a hospital uncured, she is served with a notice, by the chief medical officer thereof, that she is still

<sup>1</sup> Act 1869, s. 7, and Act 1866, s. 24. <sup>2</sup> See “ Duties of Inspector,” 5, p. 187, *post*.

<sup>3</sup> Act 1869, sch. ii. (O.)

<sup>4</sup> *Id.* s. 8, Act 1866, ss. 29 and 30.

<sup>5</sup> Act 1869, sch. ii. (Q). See, also, *ante*, p. 142.

affected with a contagious disease. The visiting surgeon may be afterwards called upon by such woman to certify in writing, endorsed on such notice, or on a copy thereof, in the following form :<sup>1</sup>—

“In pursuance of the within-mentioned Acts, I hereby certify that the within-named woman is now free from a contagious disease.

“Dated this            day of

“ (Signed)

E. F.,

“Visiting Surgeon for           .”<sup>2</sup>

11. A woman subjected, either on her own submission or under the order of a justice, to a periodical medical examination, may, if she be not under detention in a certified hospital, send in an application in writing, to be relieved therefrom, to the visiting surgeon, who must cause a copy of such application to be delivered to the superintendent of police, and if, after a report from such superintendent, he be satisfied by such report, or other evidence, that the applicant has ceased to be a common prostitute, he may, by order under his hand, direct that she be relieved from periodical medical examination. Such order must be in triplicate, and one copy must be delivered to the woman, and two to the superintendent of police.<sup>3</sup>

No particular form of order is given by the Act, but the following is in accordance with the form of application for relief :<sup>4</sup>—

“By virtue of the power in this behalf vested in me by ‘The Contagious Diseases Acts, 1866 to 1869,’ I hereby order that A. B., of           , now subject, under those Acts, to a periodical medical examination, on her own submission [*or* under the order of L. M., Esq., *as the case may be*], dated the            day of           , be relieved therefrom.

“Dated this            day of           , 18   .

“ (Signed)

E. F.,

“Visiting Surgeon for           .”

#### V. *Duties of Inspector of Hospitals.*

It is the duty of an inspector of hospitals—

1. To report to the Admiralty, or the Secretary of State for War, whether any building, or part of a building, proposed to be

<sup>1</sup> Act 1866, s. 31.

<sup>2</sup> Act 1869, sch. ii. (S.)

<sup>3</sup> *Ib.* s. 9.

<sup>4</sup> *Ib.* sch. ii. (T.)

used as a certified hospital for the purposes of the Acts, is likely to prove useful and efficient for such purposes.<sup>1</sup>

2. To visit and inspect, from time to time, every certified hospital.<sup>2</sup>

3. To sign, when necessary, copies of the regulations for the management and government of certified hospitals, such regulations having been drawn up by the managers of such hospitals, and approved by the Admiralty or Secretary of State for War.<sup>3</sup>

4. To direct the transfer of any woman detained in a certified hospital, for medical treatment, from that certified hospital to another, by order in writing, signed by him, in any case in which it may seem to him expedient.<sup>4</sup>

*Form of Order.*

“By virtue of the power in this behalf vested in me by ‘The Contagious Diseases Acts, 1866 to 1869,’ I hereby order that A. B., of \_\_\_\_\_, now detained, under those Acts, in the certified hospital of \_\_\_\_\_ for medical treatment, be transferred thence to the certified hospital of \_\_\_\_\_.

“Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

“(Signed) \_\_\_\_\_ M. N.,

“Inspector of Certified Hospitals.”<sup>5</sup>

Every such order must be in triplicate, and one of the originals must be delivered to the woman, and the others to the superintendent of police.<sup>6</sup>

5. To sign, when necessary, conjointly with the chief medical officer of a certified hospital, a certificate in the form given under the 8th head of the visiting surgeon’s duties.<sup>7</sup>

*Sec. XVIII.—Medical Visitor of Lunatics (Chancery.)*

*I. Appointment.*

1. Two medical visitors of lunatics are appointed by the Lord Chancellor, by writing under his hand,<sup>8</sup> who hold their offices during their good behaviour, but may be removed therefrom, by the Lord Chancellor, in case of misconduct or neglect in the

<sup>1</sup> Act 1866, s. 9.

<sup>2</sup> *Ib.* s. 10.

<sup>3</sup> *Ib.* s. 14.

<sup>4</sup> *Ib.* s. 23.

<sup>5</sup> Act 1869, sch. ii. (N.)

<sup>6</sup> Act 1866, s. 23.

<sup>7</sup> *Ib.* s. 24, and see *ante*, p. 185.

<sup>8</sup> 16 & 17 Vict. c. 70, s. 16.

discharge of their duties, or of their being disabled from performing the same.<sup>1</sup>

2. Every candidate for the office must be a physician in actual practice,<sup>2</sup> but after his appointment he may not be, in any way, engaged in the practice of his profession.<sup>3</sup>

3. No person may be appointed a visitor who is, or has been, within the two years then next preceding, directly or indirectly interested in the keeping of any house licensed for the reception of insane persons, and if any person, after his appointment, become so interested, his appointment becomes *ipso facto* null and void, and his salary ceases thereupon.<sup>4</sup>

## II. *Remuneration.*

1. Each medical visitor receives a salary of £1,500 per annum,<sup>5</sup> which grows due from day to day, and is payable quarterly, under the order of the Lord Chancellor, out of moneys provided by Parliament.<sup>6</sup>

2. Allowances for travelling and other expenses incident to the discharge of the duties of the office, are ordered from time to time, by the Lord Chancellor, and paid quarterly.<sup>7</sup>

3. The Lord Chancellor may, if he think fit, order to be paid to any visitor who has served as such for twenty years, and who is above sixty years of age, and is desirous of retiring, or is disabled by permanent infirmity from the performance of his duties, a superannuation allowance, not exceeding two-thirds of the salary payable to him at the time of his resignation.<sup>8</sup>

## III. *Duties.*

1. The medical visitors, together with the legal visitors and masters in lunacy, or so many of them, not being less than three, as may from time to time be able, consistently with the discharge of their other duties, to attend, must, from time to time, form themselves into a board for their mutual guidance and direction on matters connected with the visiting of lunatics. The board may report to the Lord Chancellor upon any such matter.<sup>9</sup>

<sup>1</sup> 25 & 26 Vict. c. 86, s. 24.

<sup>2</sup> 16 & 17 Vict. c. 70, s. 16.

<sup>3</sup> 25 & 26 Vict. c. 86, s. 24.

<sup>4</sup> 16 & 17 Vict. c. 70, s. 18.

<sup>5</sup> 25 & 26 Vict. c. 86, s. 24.

<sup>6</sup> *Ib.* s. 27; 16 & 17 Vict. c. 70, s. 25; and 32 & 33 Vict. c. 91, s. 13, and sch. iii., pt. 2.

<sup>7</sup> 16 & 17 Vict. c. 70, ss. 24, 25.

<sup>8</sup> 25 & 26 Vict. c. 86, s. 26.

<sup>9</sup> 16 & 17 Vict. c. 70, s. 20.



2. The visitors must strictly obey any general orders as to the visitation of lunatics, or any special orders, in any particular case, made by the Lord Chancellor.<sup>1</sup>

3. Every lunatic must be visited and seen by a visitor four times a year, at least, and the interval between such visits must in no case exceed four months, except in the case of lunatics in licensed houses, asylums, or registered hospitals, who need not be visited more than once a year, unless the Lord Chancellor otherwise direct.<sup>2</sup> Alleged lunatics must also be visited.<sup>3</sup>

4. At the expiration of every six months, the visitors must report to the Lord Chancellor the number of visits they have made, the number of patients they have seen, and the number of miles they have travelled during such months, and on the 1st day of January in each year they must make a return to the Lord Chancellor of all sums received by them for travelling expenses, or upon any other account.<sup>4</sup>

5. The visitors must, respectively, within a convenient time after each visit, make a report, in writing, to the Lord Chancellor, of the state of mind and bodily health, and of the general condition, and also of the care and treatment of each person visited and seen by them, respectively, and must state therein the results of their examination and inquiry as to the maintenance of each such lunatic, and must submit such reports to the Lord Chancellor, annually.<sup>5</sup>

6. They must also make separate or special reports, on any case, to the Lord Chancellor, as and when they or the board of visitors may think expedient.<sup>6</sup>

7. They must also report to the Lord Chancellor, without delay, any instance in which they, respectively, on proceeding to visit, have been unable to discover the then residence of, or have been, by any other circumstance, prevented from actually seeing, on that occasion, the lunatic whom they intended to visit.<sup>7</sup>

8. The reports must be filed and kept secret in the office, and be open only to the Lord Chancellor, or any person specially appointed by him, and to the members of the board, their

<sup>1</sup> 25 & 26 Vict. c. 86, s. 19.

<sup>2</sup> *Ib.* s. 20.

<sup>3</sup> *Ib.* s. 21.

<sup>4</sup> *Ib.* s. 21.

<sup>5</sup> 16 & 17 Vict. c. 70, s. 106, and G. O. 12th January, 1855.

<sup>6</sup> 16 & 17 Vict. c. 70, s. 106.

<sup>7</sup> *Ib.* s. 106.

secretary, and clerk. Upon the death of a patient, or on the inquisition in his case being superseded, or vacated and discharged on a traverse, the reports relating to such patient must be destroyed, unless, in the latter case, the Lord Chancellor otherwise direct.<sup>1</sup>

9. The visitors should be fully acquainted with the amount of the fortune and income of every lunatic, and with the scheme approved, and the allowance made, for his maintenance. It is the duty of the masters in lunacy to supply them with the necessary information.<sup>2</sup>

10. The medical visitors must, on each occasion of visiting any lunatic, inquire and examine whether such lunatic is maintained in a suitable and proper manner, having regard to the then existing amount of the allowance ordered to be paid, and the then existing scheme approved of for the maintenance of such lunatic; and also whether, having regard to the then fortune and income of such lunatic, it appears expedient that any and what addition should be made to his comforts, or any and what alterations should be made in the scheme for, or manner of, his maintenance.<sup>3</sup>

11. If, on such inquiry and examination, they consider that the lunatic is not maintained in such suitable and proper manner, or that the allowance provided for his maintenance is not duly applied, or that any provision in the scheme for his maintenance, either for his personal comfort or enjoyment, or otherwise, is not duly observed, or that any addition to the comforts, or any alteration in the manner of the maintenance of the lunatic should be made, which his then fortune or income is capable of providing, they must forthwith make a special report, stating such their opinion, and the grounds thereof, to the board of visitors, who must consider the same at their next meeting, and either refer it to the masters in lunacy, or take such other steps thereon as may seem to them expedient. Where the medical visitors have made any such special report to the board of visitors, they must, in their annual report to the Lord Chancellor, state, as far as they may be able, what steps have been taken in consequence of such special report.<sup>4</sup>

<sup>1</sup> 16 & 17 Vict. c. 70, s. 107.

<sup>2</sup> G. O. 12th Jan. 1855.

<sup>3</sup> *Ib.*

<sup>4</sup> *Ib.*

12. If a medical visitor be temporarily prevented from discharging his duty, by illness or unavoidable absence, but not otherwise, he may, with the approbation of the Lord Chancellor, appoint a physician in actual practice to act in his stead, during his illness or unavoidable absence.<sup>1</sup>

<sup>1</sup> 16 & 17 Vict. c. 70, s. 21.

## CHAPTER VI.

### RIGHTS AND PRIVILEGES OF MEDICAL MEN.

#### *Sec. I.—Recovery of Charges.*

##### *I. Who may recover : the effect of the Medical Act.*

Every person registered under the Medical Act, 1858, is entitled, according to his qualification, or qualifications, to practise medicine or surgery, or medicine and surgery, as the case may be, in any part of her Majesty's dominions, and to demand and recover in any court of law, with full costs of suit, reasonable charges for professional aid, advice, and visits, and the costs of any medicines, or other medical or surgical appliances rendered or supplied by him to his patients,<sup>1</sup> but no person is entitled to recover any such charges in any court of law, unless he can prove, upon the trial, that he is so registered.<sup>2</sup>

Since the passing of this Act, in all suits by medical men for the recovery of professional charges, registration has become a part of the plaintiff's title to recover, which it is imperative upon him to prove, and, in the absence of such proof, he will be non-suited. Nor is it necessary for the defendant to plead, as a defence to such an action, the want of registration on the part of the plaintiff, for the plaintiff must prove it as part of his case, although the

<sup>1</sup> 21 & 22 Vict. c. 90, s. 31 ; but see *post*, "Action by Physician."

<sup>2</sup> 21 & 22 Vict. c. 90, s. 32. In an action by an unregistered person to recover charges for galvanic operations, and for materials and electric fluid used in such operations, it was left to the jury to say whether the plaintiff was acting or holding himself out as a medical man, and whether the medicine supplied was supplied in that capacity, or as a means of making the galvanic fluid more effectual. The jury decided the points in favour of the plaintiff. The court refused to disturb the verdict, on the ground that the work was done before the Act came into operation, but expressed a strong opinion that, had it not been so, it would have been impossible to hold that the case did not fall within the statute. *Thistleton v. Frewer*, 31 L. J. Ex. 230.



defendant has only pleaded *nunquam indebitatus*, or *non-assumpsit*, or even although he has pleaded, as to part, that he was never indebted, and as to the residue, a tender.<sup>1</sup> Like proof will be required from a medical man who files a bill to obtain payment of sums due to him from a testator's estate for professional charges.<sup>2</sup>

It is not, however, essential, to entitle a medical man to maintain an action for attendances and medicine, that he should be registered at the time when he gave such attendances and supplied such medicine; it is enough if he appear to be duly registered at the time of trial, when he tenders proof of registration in evidence.<sup>3</sup>

Where a business is carried on by two partners, one of whom is registered as a surgeon and apothecary, and the other as a surgeon only, the firm may sue a patient, upon a joint claim for attendances and medicines supplied in both capacities.<sup>4</sup>

A registered practitioner may maintain an action for professional services rendered by an unregistered assistant, and it would seem that where such services are performed by a firm of two persons, one of whom is registered, and the other not, the firm may recover, on a joint claim.<sup>5</sup>

Where a medical man is suing on a promissory note, given in consideration of professional services, it will be necessary for him to prove registration, to entitle him to recover.<sup>6</sup>

An unregistered assistant may sue a registered practitioner for his salary, but an unregistered practitioner cannot recover on a special contract made with a registered practitioner to attend his patients, at a fixed salary, during his absence.

Where an unregistered practitioner administers medicines to, or attends professionally a patient, under a guarantee for payment given by a third person, the Medical Act affords a defence either to the principal debtor, or to the surety. So, where medicines are

<sup>1</sup> *Morgan v. Ruddock*, 4 Dowl. P. C. 311; *Shearwood v. Hay*, 5 Ad. and E. 383; *Wadsworth v. Collins*, 3 C. & K. 53; *Wills v. Langridge*, 5 L. J., N. S., K. B. 248; *Wagstaffe v. Sharpe*, 3 M. and W. 521. These cases were decided, before the passing of the Medical Act, in actions on apothecaries' bills, and turned upon 55 Geo. III. c. 194, s. 21, the wording of which is precisely similar to that used in the 32nd section of the Medical Act. See the arguments in *Haffield v. Mackenzie*, 10 Ir. Com. L. Rep. 289, and in *Turner v. Reynall*, 14 C. B., N. S., 328; 32 L. J. C. P. 164.

<sup>2</sup> *Hood v. Hall*, 6 Jur. 1121.

<sup>3</sup> *Turner v. Reynall*, and *Haffield v. Mackenzie*, *ut supra*.

<sup>4</sup> *Ib.*

<sup>5</sup> *Ib.*

<sup>6</sup> *Blogg v. Pinkers, Ry. and M.*, N. P., 125. See also note (i.), *supra*.

administered to the poor of a parish or union, on the credit of the overseers of the parish, or guardians of the union, the Act, in like manner, affords a defence, the principle being that the patient does not the less require protection because the paymaster is a third person.

Where the chief medical officer of a foreign ship, lying in the Thames, engaged a foreign medical practitioner, domiciled and practising in England, but unregistered, to take charge of the sick sailors and soldiers of that vessel (part of whom were on board the vessel, and part on shore), during his temporary absence abroad, at a fixed monthly sum, it was held that the unregistered practitioner could not recover on such contract, for that the defendant, when he went abroad, was in the situation of an ordinary paymaster, and not the less so because he happened to be a medical man, for the patients, during his absence, had no benefit from his skill or attendance, and, although the contract was made on board a foreign ship, yet, by whatever law the contract was to be interpreted, the remedy must be governed by the *lex fori*.<sup>1</sup>

A copy of the Medical Register for the time being, purporting to be printed and published under the direction of the General Council,<sup>2</sup> is evidence in all courts, and before all justices of the peace and others, that the persons therein specified are registered according to the provisions of the Medical Act, and the absence of the name of any person from such copy is evidence, until the contrary be made to appear, that such person is not so registered. In the case, however, of any person whose name does not appear in such copy, a certified copy, under the hand of the Registrar of the General Council, or of any branch council, of the entry of the name of such person in the general or local register, is evidence that such person is so registered.<sup>3</sup> If the plaintiff prove that the Register contains the name of a person bearing the same Christian and surname as himself, and that he is actually in practice, this

<sup>1</sup> See, generally, *Alvarez de la Rosa v. Prieto*, 16 C. B., N. S., 578; 33 L. J. C. P. 262.

<sup>2</sup> An objection was taken to the admissibility of the Register for 1859, on the ground that it merely purported, on its title-page, to be *published and sold at the office* of the General Council, but no decision was given on the subject, though Erle, C.J., said, "I am not prepared to yield to the objection." The Register now bears on its title-page the words "printed and published under the direction of the General Council," so the same objection cannot again be raised. See *Pedgrift v. Chevallier*, 8 C. B., N. S., 246.

<sup>3</sup> 21 and 22 Vict. c. 90, s. 27.

will be considered sufficient *prima facie* evidence to show the identity of the plaintiff with the person named in the Register, and the onus of proving the contrary will be, thereby, thrown upon the defendant.<sup>1</sup>

## II. *Liability of Patients and Third Persons.*

Medicines and medical aid are necessities for which an infant may contract, and render himself liable, but a parent is not liable to pay for such necessities furnished to an infant child, without some proof of a contract on his part, either express or implied,<sup>2</sup> and no such contract will be implied where the infant has been allowed a sufficiently reasonable sum for his expenses.<sup>3</sup>

Where a father of a family had several of his children living at a distance from his own house, under the protection of servants, it was held, that if an accident happened to one of the children, he was liable to pay for the medical attendance on such child, although he might not know the surgeon called in, and although the accident might have arisen from the carelessness of the servant.<sup>4</sup>

In dealings between medical men and the guardians of an infant, it should be remembered that, although the expenses of an extraordinary illness do not form part of the maintenance of an infant, strictly speaking, yet, where there has been no extraordinary illness, physic and doctors' fees must be included in the general allowance for past maintenance, and the court will not allow the guardian to claim an extra sum for the same.<sup>5</sup>

A master is not bound to provide medical assistance for his servant, but the obligation (if any) must arise from contract; nor will such a contract be implied, simply because the servant is living under the master's roof,<sup>6</sup> nor because the illness of the servant has arisen from an accident met with in the master's service.<sup>7</sup> Thus, where a servant, who had been hired at the yearly

<sup>1</sup> *Simpson v. Dismore*, 9 M. and W. 47; 11 L. J. Ex. 137.

<sup>2</sup> *Blackburn v. Mackey*, 1 C. and P. 1. See *Style v. Smith*, cited by Popham, J., in *Marsh v. Rainsford*, 2 Leon. 111.

<sup>3</sup> *Crantz v. Gill*, 2 Esp. 471.

<sup>4</sup> *Cooper v. Phillips*, 4 C. and P. 581.

<sup>5</sup> See *Chambers on Infancy*, p. 251.

<sup>6</sup> *Wennall v. Adney*, 3 B. and P. 247; *Sellen v. Norman*, 4 C. and P. 80. See *Scarman v. Castell*, 1 Esp. 270, and the remarks of Heath, J., thereon, in *Wennall v. Adney*. See also *Cooper v. Phillips*, 4 C. and P. 581.

<sup>7</sup> *Wennall v. Adney*, *ut supra*.



wages of £3 10s. and victuals, had his arm broken while driving his master's team, and was carried to his mother's house, and attended by the master's surgeon, who was accidentally passing such mother's house at the time, and was called in, it was held that the surgeon could recover nothing from the master, on an implied *assumpsit* to pay for the attendance.<sup>1</sup>

Where such accidents take place, the parish officers are bound to assist, and the law will so far raise an implied contract against them as to enable any person who affords that immediate assistance which the necessity of the case usually requires, to recover against them the amount of money expended.<sup>2</sup> So, in all cases where a servant falls ill, and is unable to pay for necessary medical assistance, the parish is bound to supply such assistance, although the servant may not have, previously to his illness, received or stood in need of parish relief.<sup>3</sup>

Where a servant, who hurt her foot in getting over a gate, called in a surgeon, who was not the regular medical attendant of the family, without being desired to do so by her master or mistress, it was held that the master was not liable to pay the surgeon's bill.<sup>4</sup> Where, however, a father left his children under the care of servants, in a house at some distance from his own, and one of such servants was attacked by illness, which was caused by suckling one of the children, and called in a medical man, who was not known to her master, to attend her, and where the master's wife knew of such attendance, and expressed no disapprobation, and, after this, the master sent his own surgeon to see such servant, it was held that the surgeon who had been originally called in by the servant could recover the amount of his bill from the master.<sup>5</sup>

A master is bound to provide an apprentice with proper medicines and medical attendance.<sup>6</sup>

A wife has implied authority to bind her husband for reasonable expenses for medicines and medical attendances incurred during

<sup>1</sup> Wennall v. Adney, 3 B. and P. 247.

<sup>2</sup> *Ib.*, per Lord Alvanley, C. J. See also Newby v. Wiltshire, 2 Esp. 739, and Simmons v. Wilmott, 3 Esp. 91.

<sup>3</sup> Newby v. Wiltshire, *ut supra*; and see R. v. Warren, cited 1 Russ. and Ry. 48.

<sup>4</sup> Cooper v. Phillips, 4 C. and P. 581.

<sup>5</sup> *Ib.*

<sup>6</sup> R. v. Smith, 8 C. and P. 153.



illness,<sup>1</sup> but this implied authority is put an end to if a wife, who is not living with her husband as part of his family, commit adultery,<sup>2</sup> or if she leave her husband's house, of her own accord, and without sufficient reason, and the fact has become notorious, or the husband has given sufficient notice that he will no longer be responsible for any debts which she may incur.<sup>3</sup> If, however, a husband turn his wife out of doors, without the means of obtaining necessaries, it is a presumption of law, which cannot be rebutted by evidence, that she was turned out with the authority of her husband to pledge his credit for necessaries, and in such a case, medical attendance will be considered as one of the most primary necessities.<sup>4</sup>

If a deputy-overseer, or even a mere stranger, direct a surgeon to attend a poor man, such person is liable to pay the surgeon's bill.<sup>5</sup> A deputy-overseer is not liable to pay a surgeon who has attended a pauper of his parish, without a retainer,<sup>6</sup> neither, it would seem, is an overseer liable, unless there has been an order by him, or a subsequent promise, or a knowledge of the attendance, and an acquiescence in it.<sup>7</sup> Where a pauper meets with an accident, or falls ill, and time is not afforded for procuring an order of justices, the law raises an obligation against the parish where the pauper lies sick as casual poor, to look to the supply of his necessities; and if the parish officer stand by and see that obligation performed by those who are fit and competent to perform it, and do not object, the law will raise a promise on his part to pay for the performance.<sup>8</sup> It would seem, then, that this obligation does not, in itself, amount to an implied promise, but is a good consideration for a promise. Where a pauper had his leg accidentally fractured in one parish, and was conveyed to the next house in an adjoining parish, and confined there, and visited by the overseer, and attended by the surgeon who attended the parish

<sup>1</sup> *Harrison v. Grady*, 13 L. T., N. S., 369; 12 Jur., N.S., 140; and see *Harris v. Lee*, 1 P. Williams, 482, where a wife who left her husband and came to town, to be cured of a complaint communicated by him, borrowed money of a third person, to pay the doctor's bill, and the husband's estate was held liable for the sum to such third person.

<sup>2</sup> *Cooper v. Lloyd*, 6 C. B., N. S., 519.

<sup>3</sup> See *Tod v. Stokes*, Bull. N. P. 132, and *Roper on Husband and Wife*, 2nd Ed. v. ii. p. 114.

<sup>4</sup> *Harrison v. Grady*, *ut supra*.

<sup>5</sup> *Watling v. Walters*, 1 C. and P. 132.

<sup>6</sup> *Ib.*

<sup>7</sup> See the cases, *post*.

<sup>8</sup> Per Lord Ellenborough, C.J., in *Lamb v. Bunce*, 4 M. and S. 275.

poor, with the knowledge of the overseer, it was held that the surgeon might maintain an action against the overseer for the expenses of the cure; for there was not any obligation against the parish where the accident happened to pay these expenses, and the overseer's knowing of and not repudiating the surgeon's attendance was equivalent to a request.<sup>1</sup> A pauper having casually met with an accident in a parish, the surgeon of the parish attended him, and, in the progress of the cure, one of the overseers of the parish to which the pauper belonged, called on the surgeon and desired him "to take care of the pauper, and do what he could for him," and added that "he would see him paid;" and, on a subsequent application by the parish officers, after the pauper was removed to his own parish, the overseers said "if it was right that they should pay the surgeon's bill, they would." In an action against the overseer by the surgeon for the amount of his bill, it was held that there was no legal obligation on the part of the former to pay such amount.<sup>2</sup> Where a pauper met with an accident in a parish, and was wrongfully removed (but with her own consent) to the parish to which she belonged, it was held that the overseers of the parish where she met with the accident were liable, without an express promise, to pay the expense of her cure in the parish to which she had been removed.<sup>3</sup> In such cases, however, the liability of the parish where the accident occurred ceases at once, if an order of removal be obtained, although such order may have been immediately suspended.<sup>4</sup> If, however, the illness of the pauper arise from any other cause than accident, or sudden calamity, the parish in which he is settled is under legal liability to supply him with medical aid, although he may be residing in another parish, and the law will hold a promise implied to pay the surgeon's bill by the officers of the parish where he is settled, from the time they have notice of the attendance of such surgeon, but not to pay for attendance previous to such notice.<sup>5</sup>

A medical man is not precluded from recovering professional charges, according to a scale varying with the class of patients

<sup>1</sup> *Lamb v. Bunce*, 4 M. and S. 275.      <sup>2</sup> *Gent v. Tompkins*, 1 D. and R. 541.

<sup>3</sup> *Tomlinson v. Bentall*, 8 D. and R. 493; 5 B. and C. 738.

<sup>4</sup> *R. v. The Inhabitants of Oldland*, 4 Ad. and E. 929.

<sup>5</sup> *Paynter v. Williams*, 1 Cr. and M. 810; 2 L. J., N. S., M. C. 105; *Wing v. Mill*, 1 B. and Ald. 104. See also, generally, *Atkins v. Banwell*, 2 East, 505; *Wennall v. Adney*; *Simmons v. Wilmott*; and *Newby v. Wiltshire*, *ut supra*; and per *Alderson, B.*, in *Hawtayne v. Bourne*, 7 M. and W. 600.

visited, provided that the same be fair and reasonable. In all professional dealings between medical men and their patients, the customs of the profession will be considered as imported into the contract, unless excluded, expressly or by implication.

A medical man called upon by the police to visit a sick person in any station-house within the metropolitan district, may claim from the police authorities the sum of 3s. 6d. for every such visit paid in the day-time, and the sum of 7s. 6d. for every such visit paid between the hours of 11 p.m. and 6 a.m. A certificate of attendance should be obtained, at the time, from the inspector on duty.<sup>1</sup>

The same fees are, very generally, allowed throughout England, for similar services, and have several times been recovered, in disputed cases, as fair and reasonable charges.

Whenever, under any regulations made by the Privy Council for the supply of medical aid to sick persons on board vessels, a medical officer of any union or parish performs any medical service on board of any vessel, he may charge an extra sum for any such service, at the general rate of his allowance for his services for the union or place for which he is appointed; and such charges are payable by the captain of the vessel, on behalf of the owners, together with any reasonable expenses for the treatment of the sick. If any medical practitioner, who is not a union or parish officer, render any such services, he is entitled to charges for any service rendered on board, with extra remuneration on account of distance, at the same rate as those which he is in the habit of receiving from private patients of the class of those attended and treated on shipboard, to be paid as aforesaid. In case of dispute in respect of such charges, such dispute may, where the charges do not exceed £20, be determined, summarily, at the place where the dispute arises, as in the case of seamen's wages not exceeding £50, and any justice before whom complaint is made, is to determine, summarily, as to the amount which is reasonable, according to the accustomed rate of charge within the place for attendance on patients of the like class or condition as those in respect of whom the charge is made. Where the charges exceed £20, the medical practitioner must proceed by action in the county, or in a superior court.<sup>2</sup>

<sup>1</sup> Order of the Secretary of State for the Home Department to the Metropolitan Commissioners of Police.

<sup>2</sup> 18 & 19 Vict. c. 116, s. 12; see Glen on Public Health, 5th Ed. p. 561.



A medical man, when applied to as the referee of a person proposing an insurance on his life, may claim a fee, for his report, from the patient, but not from the insurance office, although he make such report on a form supplied by the office. He may, however, on receiving an application from the office, reply that he will give no answer to the questions propounded unless a fee be paid, and, in such case, the office will be liable, if they still require his report.<sup>1</sup>

It has been decided that it is not incidental to the employment of a guard, or the superintendent of the station of a railway, to enter into a contract with a surgeon to attend a passenger injured by an accident on such railway, and that the railway company are not liable for services rendered to such passenger, on a contract so entered into, without evidence of express authority to their servant to employ the surgeon.<sup>2</sup> One ground, however, of such decision was, that, except in some very few cases, a company could only contract under seal, and since the time of the decision much more freedom in that respect has been accorded to companies.<sup>3</sup> If an accident happen to a stage coach, by which a passenger's leg is broken, the coachman has no authority to bind his master by a contract with a surgeon, nor if a lamplighter, by negligence, burn any person, has he, or any officer of the gas company, power to bind the company, by a contract for the cure of the injured person.<sup>4</sup> The general manager of a railway company has, however, as incidental to his employment, authority to bind the company to pay for surgical attendance bestowed, at his request, on a servant of the company, injured by an accident on their railway.<sup>5</sup>

A surgeon who attended a person who had been injured in an accident gave evidence as to the amount of his charge for such attendance, in an action of trespass, brought by the injured person against the person by whose negligence the injury was caused, and the plaintiff recovered £600 damages. Afterwards, such surgeon sued his patient for professional services rendered at the

<sup>1</sup> See Bunyon on Life Assurance, p. 40.

<sup>2</sup> Cox v. The Midland Counties Railway Company, 3 Ex. 268 ; 18 L. J. Ex. 65.

<sup>3</sup> See per Martin, B., in Walker v. Great Western Railway Company, 2 Law Rep. Ex. 228.

<sup>4</sup> Per Parke, B., and Rolfe, B., in Cox v. The Midland Counties Railway Company, *ut supra*.

<sup>5</sup> Walker v. Great Western Railway Company, *ut supra*.



time of the accident, and it was held that he could not go into evidence to show what he had stated as to the amount of his charges in giving his evidence in the action of trespass brought by such patient.<sup>1</sup>

When a medical man who had attended a lady professionally for several years, but had sent in no bill, expecting that she would amply compensate him by a legacy, upon finding, after her death, that she had left him nothing, sued her executors, claiming £500, and was awarded £250 by the jury, the court refused to disturb the verdict, and it was held that, to disentitle him to sue, it was necessary to show that there was something more than the mere expectation of a legacy, and that the services were rendered upon a distinct understanding that he was to receive no remuneration, except what the testatrix might think fit to leave him by her will.<sup>2</sup>

A medical man attended professionally, for several years, a lady with whom he was on terms of intimacy and friendship, but received no fees, except on one occasion, when he prescribed for her servant. The day before her death, she addressed a letter to her executors, requesting them to remunerate him in a handsome manner for his attendance, and, moreover, in her will she gave him a legacy of £3,000, and, after the death of her husband, she gave to him, and afterwards to his children, £6,000. It was proved that during the time he was attending her he prescribed and attended patients for his father and brother, and for other persons, but never took fees or sent in a bill. It was held that his services had been tendered as for a friend, and accepted as a friend, and his demand, as a debt, against the assets of the deceased was rejected.<sup>3</sup>

It is not, however, judicious for executors to resist, without due caution, claims made by a medical man against a testator's estate. In such a case, where the executors, acting *bonâ fide*, and after making inquiries on the subject, resisted the claim as unfair and excessive, and defended an action brought for its recovery, although a notice had been given them by such of the parties interested in the testator's estate as were adults (there being also

<sup>1</sup> *Sutherland v. M'Laughlin*, Car. and M. 429.

<sup>2</sup> *Baxter v. Gray*, 4 Scott, New Rep. 374.

<sup>3</sup> *Packman v. Vivian*, 24 Beav. 290. So where, in an action by a general practitioner for attendance and medicine, the jury found that he attended the patient as a friend, upon the understanding that he was to have refreshments and dinners free of charge, it was held that he could recover nothing. *Roberts v. Kerfoot*, Guildhall (N. P.), 26th Feb. 1857. (Unreported.)

infants interested), desiring them to pay the demand, and notwithstanding, also, the recommendation of their own solicitor to the same effect, and the medical attendant obtained a verdict, with costs, it was held that the executors were not entitled to be allowed, in their accounts, the costs incurred in the action.<sup>1</sup>

A medical man who is an uncertificated bankrupt may recover for professional attendance and advice, but in such a case, where a surgeon and apothecary, by an arrangement with a friend who had purchased his stock of medicines, continued in possession of them on credit, and carried on his business as before, and was supplied with fresh medicines, on credit, from wholesale houses, it was held that he could not sue for professional charges incurred under such circumstances, but that the assignees were entitled to the proceeds of a trade thus carried on.<sup>2</sup>

On a parol contract by a medical man with a public board, to perform certain professional services for "whatever recompense the board may allow as right and proper," an action will lie to recover a reasonable recompense, although the board tender what they consider right and proper; but if there be a formal written contract, no such action will lie. Where, in such a case, a surgeon, at the request of a board of guardians, and on a verbal agreement to the above effect, attended for several weeks a number of pauper children, who had been attacked by Asiatic cholera, and removed, in consequence, to an infirmary apart from the workhouse, and, on the termination of his services, the board voted him the sum of £50 as a remuneration, it was left to the jury to say what the board, acting *bonâ fide*, ought to have allowed, and a further sum was awarded to the plaintiff. In this case, also, evidence was admitted to prove the plaintiff's skill, as a surgeon.<sup>3</sup>

In a case, decided before the passing of the Medical Act, where a surgeon delivered a bill to a patient without a specific charge, leaving a blank for his attendances, the court inferred that he considered his demand in the light of a *quiddam honorarium*, and intended to leave it to the generosity of the person he had attended, and the patient having paid money into court to a certain amount, it was held that the surgeon was bound by the sum so paid, and could not recover any more.<sup>4</sup>

<sup>1</sup> Chambers v. Smith, 11 Jur. 359.

<sup>2</sup> Elliot v. Clayton, 16 Q. B. 581; Silk v. Osborn, 1 Esp. 138.

<sup>3</sup> Bird v. McGaheg, 2 Car. and K. 707.

<sup>4</sup> Tuson v. Batting, 3 Esp. 191.

Where an apothecary brought an action for a bill consisting of a great number of items, and gave evidence as to some of them only, and the jury gave a verdict for the whole amount of the bill, the court refused to grant a new trial because every item was not proved.<sup>1</sup>

In an action by a medical man against a patient, where the demand is compounded of skill and things administered, it is a good defence that the plaintiff treated the defendant ignorantly or improperly, but if the skill be not the ground of the action, the plaintiff is not precluded from recovering. Thus a medical man who has made a patient undergo a course of medicine which plainly could be of no service, could not make it a subject of charge, but an apothecary who has simply administered medicines, under the direction of a physician, may recover for the same, however improper they may have been.<sup>2</sup> The right of a medical man to recover his charges for professional services does not, however, depend upon his effecting a cure. The general rule is, that if there be no beneficial service there shall be no pay, but if some benefit have been derived, though not to the extent expected, this shall go to the amount of the plaintiff's demand, leaving the defendant to his action for negligence.<sup>3</sup> If a surgeon has performed an operation which might have been useful, but has merely failed in the event, he is, nevertheless, entitled to charge; but if it could have been useful in no event, he would have no claim on the patient.<sup>4</sup>

### III. *Action by Physician.*

Before the passing of the Medical Act, 1858, physicians were considered, in the eyes of the law, as holding a position similar to that occupied by barristers<sup>5</sup> at the present time, the presumption being that they attended patients for an honorarium,<sup>6</sup> and they were, accordingly, unable to maintain an action for fees,<sup>7</sup> and it was

<sup>1</sup> *Wheeler v. Sims*, 5 Jur. 151.

<sup>2</sup> *Duffit v. James*, cited *Basten v. Butter*, 7 East, 480; *Kannen v. M'Mullen*, 1 Peake, 83.

<sup>3</sup> Per Lord Ellenborough, C.J., in *Farnsworth v. Garrard*, 1 Camp. 38.

<sup>4</sup> See *Hill v. Featherstonhaugh*, 7 Bing. 574 and 573.

<sup>5</sup> See *Kennedy v. Broun*, 2 F. and F. 801, and *Broun v. Kennedy*, 33 L. J. Cha. 71, 342.

<sup>6</sup> *Poucher v. Norman*, 3 B. and C. 744.

<sup>7</sup> *Dixon v. Bell*, 1 Stark, N. P. 287; *Chorley v. Bolcot*, 4 T. R. 317; *Morris v. Hunt*, 1 Chitt. 551, per Bayley, J.



even held that a surgeon who passed himself off as a physician, by adding M.D. to his name, and writing prescriptions, was thereby debarred from maintaining an action for professional services, although he had no diploma at the time when he attended the patient.<sup>1</sup>

Nor could a physician even recover expenses out of pocket which were incidental to his attendance, such as those incurred in travelling to visit a patient, unless a special agreement had been made to remunerate him.<sup>2</sup> He might contract for a fixed sum, or for a reasonable compensation at the end of his attendance, and bring an action upon such contract.<sup>3</sup> Such a contract would not, however, be implied from the mere fact of his attendance on a patient, and the onus lay upon the physician of proving that an agreement existed, which no longer left the case on the ordinary footing between physician and patient.<sup>4</sup>

Where a physician had been in the habit of attending a testator for many years, but had received no remuneration for his services, it was held that he had no claim against the estate, although he proved that the testator promised to pay him for his services, or leave him an equivalent.<sup>5</sup>

A physician, however, who acted as a surgeon, or in any other capacity than that of a physician, might sue for compensation for what he had done, provided he could show that it was not done by him as a physician, and the fact that he was not paid at the different times when he was consulted, was considered as going to show that he was not acting as a physician.<sup>6</sup> A person who was both a physician and surgeon, and attended a case where the advice of a physician and the aid of a surgeon were necessary, might recover the amount of the value of his services rendered as a surgeon.<sup>7</sup>

A duly registered physician is now, in the absence of a distinct

<sup>1</sup> *Lipscombe v. Holmes*, 2 Camp. 441.

<sup>2</sup> *Veitch v. Russell*, 3 Q. B. 928; Car. and M. 362; 12 L. J. Q. B. 13.

<sup>3</sup> *Ib.*

<sup>4</sup> *Ib.*

<sup>5</sup> *Shallcross v. Wright*, 12 Beav. 558. In a Scotch case, where a physician made a claim upon the estate of a deceased patient, it was held that he could recover for his fees during the deathbed illness of the deceased, or for the sixty days preceding the death of the patient, but that his claim must be restricted to such fees. *Sanders v. Hewat*, 20 F. C. 558.

<sup>6</sup> *Little v. Oldaker*, Car. and M. 370.

<sup>7</sup> *Battersby v. Lawrence*, Car. and M. 277.



understanding to the contrary, entitled to be paid for professional practice, if not restrained by a by-law of the college of physicians to which he may belong,<sup>1</sup> and the presumption now is that he practises, not in the expectation of an honorarium, but of a remuneration, which he can demand as a legal right.<sup>2</sup> Any college of physicians may, however, pass a by-law to the effect that no one of their fellows or members shall be entitled to sue for their professional charges in any court of law, and thereupon such by-law may be pleaded in bar to any such action commenced by any fellow or member of such college, and such fellow or member will then be on the same footing, with regard to the recovery of his charges, as physicians in general were, before the passing of the Medical Act.<sup>3</sup>

Where the by-law enacts that no *fellow* shall be entitled to sue, this restriction will not affect *members*, and *vice versa*.<sup>4</sup>

Under the Medical Act, the Royal College of Physicians has power to grant licences, without restricting their licentiates from compounding and supplying for gain, the medicines which they prescribe, and it is not an invasion of the privilege of the Apothecaries' Company for such licentiates so to compound and supply medicines.<sup>5</sup>

A physician who is not registered under the Medical Act, is not entitled to recover any charge for professional advice or attendance in any court of law.<sup>6</sup>

#### IV. *Action by Surgeon.*

In the case of a person registered under the Medical Act, with a qualification in surgery only, the same question may arise as under the former Acts—viz., whether he is entitled to recover anything for attendance as an apothecary or physician.<sup>7</sup> It has been held that typhus fever is not a disease that belongs to the surgeon's branch of medicine, and that he cannot, therefore, recover for his attendances on a patient suffering under it.<sup>8</sup> A surgeon may,

<sup>1</sup> 21 & 22 Vict. c. 90, s. 31. *Gibbon v. Budd*, 2 H. and C. 92; 32 L. J. Ex. 182.

<sup>2</sup> *Gibbon v. Budd*, *ut supra*.

<sup>3</sup> 21 & 22 Vict. c. 90, s. 31.

<sup>4</sup> *Gibbon v. Budd*, *ut supra*; and see *ante*, pp. 39 and 41.

<sup>5</sup> *Att.-Gen. v. Royal Coll. of Physicians*, 1 Jo. and H. 561; 30 L. J. Cha. 757.

<sup>6</sup> 21 & 22 Vict. c. 90, s. 32.

<sup>7</sup> See 21 & 22 Vict. c. 90, s. 31; and see per Bramwell, B., in *Ellis v. Kelly*, 30 L. J. M. C. 37; 6 H. and N. 226.

<sup>8</sup> *Allison v. Haydon*, 3 Car. and P. 246; 6 L. J. C. P. 144.

however, dispense medicines to his patient, and recover for medicines so administered, in a case which he attends requiring surgical aid; but it would seem that the medicine must be subordinate and subservient to the discharge of his duty as a surgeon. Thus, he may administer medicines to prevent the necessity of an operation, to prepare the patient for it, if necessary, or to recover him from its effects, if performed.<sup>1</sup>

Where, however, a surgeon has acted as an apothecary, by dispensing medicines, he is not thereby deprived of his right to recover for his attendance as a surgeon.<sup>2</sup>

Where, in an action by a firm of surgeons against a patient, the particulars of demand consisted of items for "medicines and attendances," and at the trial, the plaintiffs' assistant proved that he had visited and dispensed medicines to the defendant, and that on one occasion he had bled the defendant, it was held that, *prima facie*, the case was an apothecary's case, and that if the claim had really arisen on a surgical case, it should have been so stated in the particulars, and that the single instance of bleeding did not turn the charges for medicines into medical charges auxiliary to a surgical case.<sup>3</sup>

It has been held that dropsy is not altogether a surgical case, but that where a surgeon is called in to such a case, he may recover for any work done for the patient specifically within the province of a surgeon's practice, such as puncturation, scarification, bandaging, and friction.<sup>4</sup> It has also been held that a surgeon steps out of his lawful province if he takes upon himself to cure consumption.<sup>5</sup>

The true test seems to be that where, in any particular instance, the medical attendant judges of the malady by the symptoms of the patient in regard to the internal functions of the body, and applies himself to cure it, not by manual operation externally, but by the administration of medicine internally, the case cannot be classed as a surgical one.<sup>6</sup>

<sup>1</sup> Allison v. Haydon, 3 Car. and P. 246; 6 L. J. C. P. 144; and Simpson v. Ralfe, 4 Tyr. 325.

<sup>2</sup> Simpson v. Ralfe, *ut supra*.

<sup>3</sup> Proud v. Mayall, 3 Dowl. and L. 531.

<sup>4</sup> Battersby v. Lawrence, Car. and M. 277.

<sup>5</sup> Apothecaries' Co. v. Lotinga, 2 Moo. and R. 495.

<sup>6</sup> S. C. per Cresswell, J.

### V. *Action by Apothecary.*

An apothecary was, originally, only a compounder of medicines prescribed by physicians, and the legislature has always considered this a most important part of his duty.<sup>1</sup> In more modern times, however, apothecaries have been in the habit of attending patients, and administering medicines upon their own judgment,<sup>2</sup> and latterly it has been held that an apothecary is not merely to make up medicines, but is to have a certain portion of competent skill for the administering of them,<sup>3</sup> and an apothecary has been defined as "a person who professes to judge of internal disease by its symptoms, and applies himself to cure that disease by medicines."<sup>4</sup>

The practice of an apothecary may now be said to consist in attending and advising patients afflicted with diseases requiring medical (as distinguished from *surgical*) treatment, and prescribing, compounding, and supplying medicines for their cure or relief. The class of cases which it is the province of the apothecary to treat, includes most of the diseases by which the human frame is affected; for instance, diseases of the brain, the lungs, the heart, the stomach, the liver, and the bowels, when the disorder is unattended by any external wound, sore, or tumour, and when medical treatment, unaided by any manual operation, is called for.

A very general impression existed, up to recent times, that an apothecary was not entitled to charge for attendances,<sup>5</sup> but it was at length decided that he might charge for either attendances or medicines, but could not be permitted to make a charge for both.<sup>6</sup> Shortly after the decision in this case, however, Lord Tenterden held that an apothecary might recover for attendances (the charge being reasonable) as well as for medicines,<sup>7</sup> and it has now been formally decided that there is no rule of law which prevents an apothecary from making distinct charges for attendances and for medicines.<sup>8</sup> The question may still arise, in an action by an

<sup>1</sup> See 55 Geo. III. c. 194, s. 5, and the judgment in *Apoth. Co. v. Warburton*, 3 B. and Ald. 43, and *ante*, p. 76.

<sup>2</sup> Their right to do this was first recognised in *The College of Physicians v. Rose*, 6 Mod. 44; 3 Salk. 17.

<sup>3</sup> Per Parke, J., in *Allison v. Haydon*, 3 C. and P. 248.

<sup>4</sup> Per Cresswell, J., in *Apoth. Co. v. Lotinga*, 2 Moo. and R. 499.

<sup>5</sup> See *Gensham v. Germain*, 11 Moore, 1.

<sup>6</sup> *Towne v. Lady Gresley*, 3 C. and P. 581. <sup>7</sup> *Handey v. Henson*, 4 C. and P. 110.

<sup>8</sup> *Morgan v. Hallen*, 8 Ad. and E. 489; and see also the wording of s. 31 of the Medical Act.



apothecary against a patient, whether any contract can be inferred which precludes the plaintiff from charging for attendances, and if the price demanded for medicines is so high that the jury think it ought to include attendances, they may disallow the claim for such attendances.<sup>1</sup>

It is no longer necessary, in an action to recover the amount of an apothecary's bill, for the plaintiff to prove a certificate from the Society of Apothecaries, for the appearance of his name on the Register is sufficient evidence of his right to practise in any part of her Majesty's dominions. Neither is a registered apothecary precluded from recovering the amount of his charges for medicine and attendances furnished in London, because he has obtained an extra-urban licence, only, from the Society of Apothecaries, although he may have rendered himself liable to a fine from the society, for the power to impose such fine is a mere fiscal regulation for the benefit of the company.<sup>2</sup>

#### VI. *Action by Dentist.*

By the Medical Act<sup>3</sup> it is enacted that her Majesty may, by charter, grant to the Royal College of Surgeons of England power to institute and hold examinations for the purpose of testing the fitness of persons to practise as dentists who may be desirous of being so examined, and to grant certificates of such fitness. Such power having been granted, examinations in dental surgery are now held by the said college, and certificates of fitness given to those who pass such examinations, and comply with the other requisitions of the college, but the possession of such a certificate does not confer upon its holder any exclusive right to practise as a dentist, as the Medical Act does not extend to prejudice, or in any way affect, the lawful occupation, trade, or business of a dentist.<sup>4</sup> Any person, therefore, whether he has undergone such examination or not, is entitled to recover, in any court of law, his reasonable charges for work and labour done, and materials provided as a dentist.

It has been held that a contract to make a set of artificial teeth is a contract for the sale of goods, wares, or merchandizes, within

<sup>1</sup> See, generally, *Morgan v. Hallen*, 8 Ad. and E. 489.

<sup>2</sup> See *Young v. Geiger*, 6 C. B. 551 (per Maule, J.); *Chadwick v. Bunning*, 2 C. and P. 106; *Wadsworth v. Collins*, 3 Car. and Kir. 53.

<sup>3</sup> 21 & 22 Vict. c. 90, s. 48; and see *ante*, p. 60.

<sup>4</sup> *Ib.* s. 55.



the 17th section of the Statute of Frauds,<sup>1</sup> which enacts that no such contract, if it be for £10 or upwards, shall be good, unless there be a delivery and acceptance of the goods, or part thereof, or something paid by way of earnest, or in part payment, or some memorandum in writing of the contract, signed by the parties to be charged, or their agents. A lady ordered of a dentist a set of artificial teeth, which were to cost more than £10, and which were to be fitted to her mouth. As soon as the teeth were ready, the dentist wrote to her, requesting her to appoint a day when he could see her, for the purpose of fitting them, to which she replied as follows:—"My dear Sir,—I regret, after your kind effort to oblige me, my health will prevent my taking advantage of the early day. I fear I may not be able for some days.—Yours, &c." Shortly afterwards, and before the teeth were fitted, the lady died. It was held that the letter was not a sufficient memorandum of the contract to satisfy the Act, and that the dentist could not sue the lady's executor, in an action for work and labour done, and materials provided for his testatrix.<sup>2</sup>

As in the case of medical men,<sup>3</sup> it is a good answer to an action for work and labour by a dentist, that the defendant has been injured instead of benefited by the plaintiff's treatment, in consequence of want of skill or negligence on the part of the latter. Thus where, in such a case, the defendant proved that the plaintiff administered chloroform to him, and then pulled out the wrong tooth, it was held that the plaintiff was not entitled to recover.<sup>4</sup>

## VII. *Action by Chemist.*

The trade or business of a chemist and druggist should be confined to the buying, preparing, compounding, dispensing, and vending drugs, medicines, and medicinale compounds, whether wholesale or retail,<sup>5</sup> and nothing contained in the Medical Act prejudices, or in any way affects such a business, carried on within these limits.<sup>6</sup> A chemist and druggist, however, who takes upon himself to prescribe medicines, or attend the sick, or in any way

<sup>1</sup> 29 Car. 2, c. 3.

<sup>2</sup> *Lee v. Griffin*, 1 B. and S. 272; 30 L. J. Q. B. 252.

<sup>3</sup> See *ante*, p. 203.

<sup>4</sup> *Wainwright v. Gilpin*, Sheriffs' Court. (Unreported).

<sup>5</sup> See 55 Geo. III. c. 194, s. 28. As to registration of chemists and druggists, see *ante*, p. 96.

<sup>6</sup> 21 & 22 Vict. c. 90, s. 55.

acts as an apothecary, is liable to penalties, under 55 Geo. III. c. 194,<sup>1</sup> and is not entitled to recover for medicines supplied, although he may have made out his bill as a chemist, and whether or not any of the items are properly within the scope of an apothecary's profession, the question for the jury being, not whether he has charged as an apothecary, but whether he has acted as such.<sup>2</sup> In such a case, the plaintiff will not even be entitled to recover for the phials in which the medicines were contained.<sup>3</sup>

No person may now assume the title of chemist and druggist, or chemist, or druggist, or pharmacist, or dispensing chemist or druggist, or sell, or keep open shop for retailing, dispensing, or compounding poisons,<sup>4</sup> in any part of Great Britain, unless he be registered under the Pharmacy Act (1868).<sup>5</sup>

The language of this Act differs from that of the Medical Act, and the Apothecaries' Act, and does not render it necessary for a chemist and druggist to prove registration before he can recover, but the want of registration will, if pleaded, be a good answer to an action by a chemist and druggist.<sup>6</sup>

It would likewise be a good defence to an action, even by a registered chemist and druggist, that the medicines for which the plaintiff was seeking to recover were medicines of the British Pharmacopœia, and that the plaintiff did not compound them according to the formularies of the said Pharmacopœia.<sup>7</sup>

No restriction exists on the making or dealing in patent medicines.<sup>8</sup>

The governors of a hospital are not liable for medicines supplied to the hospital,<sup>9</sup> but an action has been maintained against the medical officers of a dispensary (who were also members of the managing committee) for medicines so supplied for the dispensary, on the orders of others of its medical officers, on behalf of the committee, and with the knowledge of the defendants, and the jury were directed that the defendants would be personally liable,

<sup>1</sup> *Apothecaries' Company v. Greenhough*, 1 G. and D. 378; 11 L. J. Q. B. 156.

<sup>2</sup> *Richmond v. Coles*, 1 Dowl. N. S., 560; 11 L. J. Q. B. 155.

<sup>3</sup> *Steed v. Henley*, 1 Car. and P. 574.

<sup>4</sup> See *post*, c. 7, sec. viii., as to what are deemed poisons.

<sup>5</sup> 31 & 32 Vict. c. 121. See also 33 & 34 Vict. c. 26, as to Ireland.

<sup>6</sup> See *Cope v. Rowlands*, 2 Mee and W. 149.

<sup>7</sup> 31 & 32 Vict. c. 121, s. 15; and *Cope v. Rowlands*, *ut supra*.

<sup>8</sup> 31 & 32 Vict. c. 121, s. 16.

<sup>9</sup> Per Pollock, C. B., in *Cross v. Williams*, 10 W. R. 303.

unless they made the plaintiffs understand that they were to look only to the funds of the institution.<sup>1</sup>

It is unlawful for a chemist or druggist to sell to any licensed brewer of, or dealer in beer, or to any person, for the use of such brewer or dealer, any article or preparation to be used in worts or beer, for, or as a substitute for malt, and any chemist or druggist who offends against this provision is not only precluded from recovering the value of the articles so supplied, but is also liable to a penalty of £500, for every such offence.<sup>2</sup>

Every adulteration of any article usually taken or sold as medicine is deemed an admixture injurious to health, and every registered chemist and druggist who sells any such article adulterated, is, unless the contrary be proved, deemed to have knowledge of such adulteration, and is liable, for every such offence, to a penalty not exceeding £5, together with reasonable costs attending such conviction. Upon a second conviction for a like offence, the offender's name, place of abode, and offence may be published in the newspapers, or in some other manner, and the offender may be compelled to pay the costs attending such publication, as well as any fine which may be imposed upon him.<sup>3</sup>

Any person who sells, or supplies, or manufactures, or keeps, or offers for sale any medicines, medicaments, or medical stores, of bad quality, for the use of any ship, is liable to a penalty not exceeding £20, for each offence,<sup>4</sup> and will not be entitled to recover the charge for such articles.

The duties before payable as stamp duties upon licences by persons being owners, proprietors, makers, and compounders of, and persons uttering, vending, or exposing to sale, or keeping ready for sale any medicine liable to stamp duty, are now, by the 27 & 28 Vict. c. 56, s. 6, payable as Excise duties. Such licences are granted by the officers of Excise, who have the powers of officers of stamps, contained in any Act relating to such duties or licences, &c.; and all duties, fines, penalties, &c., may be collected and sued for as any other Excise duties, &c., as well as in the manner directed by any Acts relating to the said duties and licences.

<sup>1</sup> *Luckombe v. Ashton*, 2 F. and F. 705.

<sup>2</sup> See *Langton v. Hughes*, 1 M. and S. 593; 56 Geo. III. c. 58, s. 3, and 25 & 26 Vict. c. 22, s. 20.

<sup>3</sup> 31 & 32 Vict. c. 121, s. 24; 23 & 24 Vict. c. 84, s. 1.

<sup>4</sup> 13 & 14 Vict. c. 93, s. 67; 30 & 31 Vict. c. 124, s. 5.



### VIII. *Action by Veterinary Surgeon.*

A veterinary surgeon may recover on a *quantum meruit* for services and medicines, if there be no contract, but an usage for a veterinary surgeon to charge for attendance, when there is not much medicine required, is too uncertain to be considered such a general usage applicable to the profession as will be binding upon all persons employing the members of such profession.

The certificate of the Veterinary College that a certain person has attended lectures there, is not admissible in evidence, as not coming from a body known to the law.<sup>1</sup>

### *Sec. II.—Action for Defamation.*<sup>2</sup>

#### *I. The Law generally.*

Two kinds of defamation are known to the law, written and oral, and to these have been given the respective names of “libel” and “slander.” Libel may be expressed by printing, writing, pictures, or signs, and slander, by signs or words spoken.

Any person whose character or conduct may have been attacked in any of the above-mentioned ways may apply for leave to file a criminal information (in which case he must, in general, waive his right to bring a civil action), or may proceed by criminal indictment, or by a civil action for damages, which may also be brought after the criminal action, provided that the defendant has been convicted under the indictment.

Defamatory matter, whether published in the form of libel or slander, is actionable when it imputes a criminal offence, or a contagious or infectious disorder, or affects the plaintiff injuriously in his lawful profession, trade, or business, or in the discharge of a public office, or, generally, when it is false and malicious, and its publication causes damage to the plaintiff, either in law or in fact. Defamatory matter, the publication of which tends to degrade or disparage the plaintiff, or which renders him ridiculous, or charges him with want of honesty, humanity, or veracity, or is intended to impair his enjoyment of society, fortune, or comfort, is actionable as libel, but not as slander, unless special damage be

<sup>1</sup> See *Sewell v. Corp.*, 1 Car. and P. 392; see also *Clark v. Mumford*, 3 Camp. 37.

<sup>2</sup> See, generally, *Starkie on Slander and Libel*, 3rd Ed. by Folkard, 1869.



proved. An action lies, not only where the libellous meaning is apparent on the face of the defamatory matter itself, and where such defamatory matter obviously relates to the plaintiff, but also where such matter, although not defamatory in its natural meaning, is used in a defamatory sense on the special occasion, or conveys some latent injurious imputation, which may be explained by *innuendo*, showing, by collateral circumstances, that such peculiar meaning was intended to be conveyed, and also where the connection of such words with the plaintiff can be explained by a similar *innuendo*. In all cases, it is a question for the jury whether the matter which forms the subject of the action is defamatory or no.

As a rule, defamatory matter, to be actionable, must have been falsely and maliciously published, but on certain occasions, the speaker or writer is not liable to an action for stating what is false, if he has not been actuated by malice in making such statement. Thus, for instance, the following communications are considered "privileged:"—The proceedings in Parliament, statements made by judges, coroners, counsel, witnesses, &c., in the course of judicial proceedings, the reports of trials in courts of justice, fair criticism of literary publications, not involving an attack on private character, fair comments on acts performed by any person in a public capacity, statements made with a fair and reasonable purpose of protecting the interest of the party making the communication, or of the party to whom it is made, and all statements made *bonâ fide* as to the conduct and character of servants, even when voluntarily made. Thus, an assistant who has left the service of a medical practitioner, cannot bring an action against his former master for any defamatory statements which he may have made, without malice, concerning him, to any person who might otherwise have taken him into his employ, whether such person did or did not apply to the former master for such assistant's character.

The plea of "not guilty" denies the publication of the matter, and that it is defamatory, and puts in issue the *innuendo* and the special damage, but not the fact that the plaintiff is of the particular profession alleged. The defendant may justify the libel, on the ground of its truth, or give in evidence, in mitigation of damages, the tender of an apology to the plaintiff, before the commencement of the action; or, in the case of an action against a newspaper, the defendant may plead that the libel was inserted without malice or gross negligence, and that, at the earliest opportunity

afterwards, he inserted a full apology in such newspaper, and may also pay into court such sum as he may deem fit, by way of amends for the injury sustained by the plaintiff.

An action for libel must be brought within six years after the cause of action.

An action for slander must be brought within two years after the words spoken, unless such words are actionable only by reason of special damage, in which case the action may be brought within six years.

## II. *Cases particularly affecting medical men.*

Any matter affecting a medical man in his profession, although not in itself actionable, becomes so if it tend to disgrace or affect him injuriously in such profession, but, unless the fact be admitted in the defamatory matter, he must prove that he was in practice, and legally qualified to act in such capacity at the time when the cause of action arose, or the words could not have affected him in his profession. In every such publication, the law will infer malice.<sup>1</sup>

Partners may sue jointly, and recover damages for injury sustained in their joint business.<sup>2</sup>

Where special damage is claimed, such damage must have actually occurred, must be the natural and direct consequence of the wrongful act, and not too remote. If, however, the plaintiff fail in proving special damage, as, for instance, the loss of particular patients, he may recover damages for a general loss of business, if the matter be actionable in itself, whether such loss has or has not actually arisen, at the time.

Where a medical man alleges loss of patients, as a special damage, he must set out the names of such patients in his declaration.<sup>3</sup>

### 1. *Where action will lie.*

It seems that an action will lie, without averment of special damage, for slander imputing to a physician that he has taken

<sup>1</sup> See *Wogan v. Somerville*, 1 Moore, 102; 7 Taun, 401; *Bellamy v. Burch*, 16 M. and W. 590; *Moises v. Thornton*, 8 T. R. 303. But see *Tuthill v. Milton*, Yelv. 158; *Smith v. Taylor*, 1 B. and P. N. R. 196. Before the passing of the Medical Act, it was held that defamatory matter affecting physicians in their profession (whose situation in the eyes of the law was considered as merely honorary and confidential) was actionable. This will still apply in the case of registered physicians precluded from suing for their fees by a by-law of the college to which they belong. See *ante*, pp. 39, 41, and 203.

<sup>2</sup> *Forster v. Lawson*, 11 Moore, 360.

<sup>3</sup> *Hartley v. Herring*, 8 T. R. 130; *Evans v. Harries*, 1 Hurl. & N. 251.

advantage of his character as a physician to abuse the confidence reposed in him, and commit acts of criminal conversation with a patient.<sup>1</sup>

It is actionable, without averment of special damage, to say of a doctor of physie: "Thou art a drunken fool, and an ass. Thou wert never a scholar, nor even able to speak like a scholar," because the words discredit him in his profession.<sup>2</sup>

In an action by a physician, the editor of a periodical work called the *London Medical and Physical Journal*, for a libel contained in the *Lancet*, tending to cast ridicule on the plaintiff, as such editor, a verdict was given for the plaintiff, the jury finding that the remarks made by the defendant were not fairly called for, and that he had, under pretence of criticizing the work, taken an opportunity of attacking the character of the author.<sup>3</sup>

In an American case,<sup>4</sup> the following words, spoken of a physician in reference to his profession, were held actionable *per se*: "Dr. S. killed my children. He gave them teaspoonful doses of calomel, and it killed them. They did not live long after they took it. They died right off—the same day."

So, in a similar case,<sup>5</sup> the words, "He killed the child by giving it too much calomel," were held actionable, thus overruling the decision in the case of *Poe v. Mondford*,<sup>6</sup> where it was held not to be actionable to say that a physician had killed a patient with medicine, unless it was also charged that he knowingly and wilfully administered it for that purpose. In that case, the words were, "He hath killed J. S., in the Old Jewry, with physie, which physie was a pill, and Dr. H. and Dr. P. found the vomit in his mouth."

In *Tutty v. Alewin*,<sup>7</sup> the point can hardly be considered to have been raised, as the slander complained of by the plaintiff, an apothecary, which was held to be actionable, comprised not only the words, "He was the death of J. P.; he has killed his patient with physie," but also the words, "It is a world of blood he has to answer for in this town, through his ignorance; he did kill a woman and two children, at Southampton; he did kill J. P., at Petersfield."

<sup>1</sup> *Ayre v. Craven*, 2 Ad. and E. 2; 4 Nev. & M. 220; 4 L. J., N. S., K. B. 35.

<sup>2</sup> *Cawdry & Tetley's case*, Godb. 441.

<sup>3</sup> *Macleod v. Wakley*, 3 Car. & P. 311.

<sup>4</sup> *Secor v. Harris*, 18 Barb. 425.

<sup>5</sup> *Johnson v. Robertson*, 8 Porter's R. 586.

<sup>6</sup> Cro. Eliz. 620. See also Com. Dig. tit. "Action upon the case for Defamation" (F. 15).

<sup>7</sup> 11 Mod. 221.



It has been held actionable to call a physician a "quack-salver," or "an empiric, a mountebank," or to say of him, "Thou gavest physic which thou knewest to be contrary to the disease," or to say of a surgeon, "Thou art no good subject, for thou poisonedst A.'s wound, to get more money of him."<sup>1</sup>

It has been held actionable to say of a midwife, "Many have perished for her want of skill,"<sup>2</sup> or, "She is an ignorant woman, and of small practice, and very unfortunate in her way; there are few she goes to but lie desperately ill, or die under her hands,"<sup>3</sup> or, "Thou art no midwife, but a nurse; and if I had not pulled thee from Mrs. J. S., thou hadst killed her and her child,"<sup>4</sup> or, "She layeth no woman, but Dr. C. or his lady doth her work."<sup>5</sup> In the last-mentioned case, however, special damage was alleged.

To allege of a physician that he is not entitled to practise, as not being duly licensed, may be actionable,"<sup>6</sup> or to say that "his treatment of a patient was rascally."<sup>7</sup>

It was held actionable to say of an apothecary, "That rogue Davis the apothecary hath poisoned my uncle; I will have him digged up again, and hang him."<sup>8</sup>

It was held actionable to say to a surgeon, who had had one M. (since dead) under his care, "Thou didst kill Mr. M., thou didst kill him," and that, without alleging that the plaintiff was a surgeon at the time the words were spoken.<sup>9</sup>

In *Hele v. Gyddy*,<sup>10</sup> the general rule was laid down that where one gains his living by a lawful trade, as a physician, and one defames him in exercising of that which he professes and exercises, an action lies. Any language that imputes to a medical man ignorance generally in his profession, or such ignorance as unfits him for its proper exercise, is actionable, as to call him a quack,<sup>11</sup> or to say of him, "He is a quack, and if he shows you a diploma, it is a forgery."<sup>12</sup>

<sup>1</sup> See Com. Dig. tit. "Action upon the case for Defamation" (D. 23).

<sup>2</sup> Flower's case, Cro. Car. 211.

<sup>3</sup> Wharton v. Brook, Vent. 21.

<sup>4</sup> Whitehead v. Founes, Freem. 276.

<sup>5</sup> Gyles v. Bishop, Freem. 278.

<sup>6</sup> Collins v. Carnegie, 1 Ad. & E. 695; 3 Nev. & M. 703.

<sup>7</sup> Camp. v. Martin, 23 Conn. 86.

<sup>8</sup> Davis v. Ockham, Sty. 245.

<sup>9</sup> Watson v. Vanderlash, Het. 69.

<sup>10</sup> Cited in Viner's Abr. tit. "Actions for Words" (M. b. 4).

<sup>11</sup> Pickford v. Gutch, 8 T. R. 305, n.

<sup>12</sup> Moises v. Thornton, 8 T. R. 303; 3 Esp. 4.



Such words are actionable, without any colloquium, if they necessarily relate to the plaintiff's employment.<sup>1</sup>

Where the plaintiff, a physician, was called in to a patient, during the absence of another physician, who, together with the defendant, an apothecary, had been attending such patient, and where the defendant, as such apothecary, made up the medicines prescribed by the plaintiff for such patient, the following words, spoken by the defendant of the plaintiff, in his profession, were held actionable: "Dr. S. has upset all we have done, and die he (the patient) must," but the court were divided on the question whether it was necessary for the plaintiff to produce a diploma, or other direct evidence that he had taken a degree in physic, in order to maintain the action.<sup>2</sup>

An action will lie for words spoken by a subscriber to a charity, in answer to inquiries by another subscriber, respecting the conduct of a medical man in his attendance upon the objects of the charity, as such communication is not privileged.<sup>3</sup>

In the case in which the last-mentioned decision was given, and in which the plaintiff, who was a man-midwife, recovered a verdict, the slander complained of was as follows: "I am quite satisfied with his professional skill, but I can assure you the poor women are quite terrified at the thought of having him; and one poor woman said she quite shuddered at his name being mentioned. What he has done is too bad to mention." Special damage was laid.

Where one surgeon sent to another, who was staying at the same hotel, a book on a surgical subject unfit for the public eye, and the other surgeon afterwards published a paper, purporting to be a protest of certain visitors at the hotel, setting forth that the plaintiff had left the book there with directions for it to be placed in some conspicuous place, and that they denounced this as a revolting violation of decency, a quackish and indelicate mode of advertisement, and a demoralizing system of puffing, and caused to be published, in the *Medical Circular*, a letter to a similar effect, the plaintiff recovered a verdict, in an action for libel, and it was held that the jury might infer that the defendant himself exposed the book, with a view of using it as a pretext for the charge, in the absence of evidence to the contrary.<sup>4</sup>

<sup>1</sup> Bell v. Thatcher, Freem. 275.

<sup>2</sup> Smith v. Taylor, 1 B. & P. N. R. 196.

<sup>3</sup> Martin v. Strong, 5 Ad. & E. 535; 1 N. & P. 29; 6 L. J., N. S., K. B. 48.

<sup>4</sup> Wells v. Webber, 2 F. & F. 715.

The words, "He is a bad character; none of the medical men here will meet him," spoken of a surgeon and accoucheur, are actionable, as importing a want of a necessary qualification for a surgeon, in the ordinary discharge of his duties.<sup>1</sup>

The words, "I wonder you had him to attend you. Do you know him? He is not an apothecary; he has not passed any examination. Several have died that he had attended, and there have been inquests held upon them," spoken by the defendant, of and concerning the plaintiff, to a former patient of the plaintiff, have also been held actionable.<sup>2</sup>

The following words, published of a medical man, have been held libellous:—"Dr. Tweedie (a physician) has honourably and faithfully discharged his duty to his medical brethren (in refusing to act or consult with the plaintiff, also a physician), and we hope everyone else will do the same," and the defendant was not allowed to offer in evidence the opinion of a medical witness on this head, in order to prove truth, as a justification.<sup>3</sup>

In an action for libel, brought on the following article, which appeared in the *Lancet*, the plaintiff (a physician) recovered a verdict:—

"*Tweedie v. Ramadge*.—Dr. Ramadge (the plaintiff) was in attendance on a case of typhus. The patient, a young lady, was bled from the arm, on a Friday, and eight dozen leeches were applied to the head and neck. On Saturday, both temporal arteries were opened, the patient fainted, and the apothecary, who was likewise in attendance, left her. The nurse brought her round, with wine and water. On the Sunday, another dozen leeches were applied, and immediately she became delirious, when Dr. Tweedie's advice was requested by the relatives. Dr. Tweedie, having spoken apart with Dr. Ramadge, addressed Mrs. Reynolds, the sister of the patient, and said that, having attended the family before, he should be happy now to give his assistance to the young lady, but that Dr. Ramadge's conduct in a late correspondence with John Long (a man who professed to cure consumption, and was twice tried at the Old Bailey for the manslaughter of his patients) had been such that no medical man of respectability could call him in, or consult with him, without injuring himself in the eyes of his

<sup>1</sup> *Southee v. Denny*, 1 Exch. 196; 17 L. J. Ex. 151.

<sup>2</sup> *Ib.*

<sup>3</sup> *Ramadge v. Ryan*, 9 Bing. 333; 2 Mo. and Sc. 421; 2 L. J., N. S., C. P. 7.

brethren. That he bore no private pique against Dr. Ramadge; he believed him, indeed, to be clever, but his character, as regarded the above transaction, rendered it imperative for all medical men to decline acting with him, and Mrs. Reynolds must, therefore, choose which she would trust. Dr. Ramadge replied, in great anger, that he was a gentleman by birth, education, and profession, but that Dr. Tweedie was neither. Dr. Tweedie answered him by turning coolly on his heel, and walking out of the room. Dr. Tweedie was retained, and cured the patient by exactly opposite treatment. Dr. Ramadge, it is said, is frequently at supper with John Long.”<sup>1</sup>

In an action for libel contained in a pamphlet, the plaintiff alleged that he was a medical practitioner, and, as such, had practised, and continued to practise, with great reputation and success, and that the libel had been published of and concerning him in his said practice. No evidence was given of any licence or authority to practise, nor was the plaintiff mentioned in the libel as a regular medical man, but as “physician extraordinary to several ladies of distinction,” “the female destroyer,” “the vile quack,” “a doctor, or rather quack,” while the writer expressed pity for those who “had the misfortune to come within his doctrinal prescriptions.” It was held that the plaintiff’s claim for damages, in his medical capacity, was not wholly withdrawn from the consideration of the jury, although they might not give him such damages as they would to a regular practitioner, and that they might also give damages for the attack on his private character. The words were held libellous, as being not fair and candid criticism, but a malevolent attack upon an individual.<sup>2</sup>

In an action by an apothecary, for slander, the words, “He killed my child; it was the saline injection that did it,” with the innuendo that the plaintiff had been guilty of feloniously killing the child, by improperly, and with gross ignorance, and with gross and culpable want of caution, administering the injection, were held actionable, and the defendant’s plea “that the plaintiff had professed to be an apothecary, and the defendant, upon the faith of his being qualified as such, suffered him to attend the child, and that the plaintiff did, injudiciously, indiscreetly, and improperly,

<sup>1</sup> *Ramadge v. Wakley*, cited in *Ramadge v. Ryan*, *ante*, *q.v.*

<sup>2</sup> *Long v. Chubb*, 5 Car. and P. 55.



and contrary to his duty in that behalf, administer a saline injection to the child, who thereupon shortly afterwards died; and that death was caused or accelerated by such injection," was held bad, on the ground that the words, as laid, contained a charge of manslaughter, and that the plea contained no justification of the words, so understood.<sup>1</sup>

In the same case, the words "Mr. P. told me that he (the plaintiff) had given my child too much mercury, and poisoned it, otherwise it would have got well," were held actionable *per se*.

It is a libel to impute to a physician of position and character that he is concerned in vending quack medicines; and where a chemist advertised certain "consumption pills" under a false and colourable representation that they were a medicine of Sir J. Clarke, a physician of eminence, such advertisements were deemed libellous.<sup>2</sup>

It has been held libellous to publish of an attorney that, in certain of his professional transactions, "Messrs. Quirk, Gammon, and Snap were fairly equalled, if not outdone,"<sup>3</sup> and it would, probably, be also held libellous (at any rate, with an averment of special damage) to call a physician a "Dr. Sangrado," the general rule being that it is libellous to compare a person with any notorious and disreputable character, or to compare their transactions, whether such characters ever actually existed, or were mere creations of the author's brain, in a work of fiction.

In an action for libel,<sup>4</sup> the declaration stated that the plaintiff was a barrister, and editor, and proprietor of a weekly publication, called the *Medical Times*, and also secretary to the committee of "Poor-law Medical Officers," and to the "Convention of Poor-law Medical Officers;" that there existed an association called "The National Institute of Medicine;" that certain medical Poor-law union officers were endeavouring to bring about an amelioration of the then existing system of Poor-law medical relief, and that "The National Institute of Medicine" was willing to lend its assistance to the medical Poor-law union officers, and to allow that body the use of certain rooms held by them.

The first count alleged that the defendant, in a weekly

<sup>1</sup> Edsall v. Russell, 4 M. and G. 1090; 12 L. J. C. P. 4.

<sup>2</sup> Clark v. Freeman, 11 Beav. 112.

<sup>3</sup> Woodgate v. Ridout, 4 F. and F. 202.

<sup>4</sup> Wakley v. Healey (in Error), 7 C. B. 591.



publication called the *Lancet*, published, of and concerning the plaintiff, the following :—

“In our last, we advised the medical officers of the Poor-law unions to adopt an independent course, to trust to the justice of their cause, and to their own legitimate exertions for an amendment of the grievances of which they so justly complain. . . . When we wrote, there was only one party of a suspicious character attempting to obtain the management of the Poor-law medical agitation, for selfish purposes. Now there are two quacks in the field; the one recommending Charing-cross, the other the rooms of the National Institute—the one offering house room gratis, the other attempting to levy contributions on the Poor-law medical purse. If the Poor-law union suffer either of these parties to intermeddle with their affairs, their cause will be inevitably ruined. . . . Above all, we would exhort the medical officers to avoid the traps set for them by *desperate adventurers* (innuendo—meaning the plaintiff, among others) who, participating in their efforts, would inevitably cover them with ridicule and disrepute.”

It was held by the Court of Error that the words charged were libellous.

The second count alleged that the defendant further published, of and concerning the plaintiff, the following :—

“We need not here dwell upon the impolicy of the connection between the present agitation and the National Institute—a body which has disgusted the Government—and with other persons not belonging to the profession (meaning the plaintiff), and whose weekly vocation it is to bring everything belonging to the profession into disrepute and contempt (thereby meaning that the plaintiff was in the habit, as editor of the said weekly publication called the *Medical Times*, as aforesaid, of bringing the medical profession into disrepute and contempt.)”

It was held, by the Court of Error, that the words were libellous, without the aid of the innuendo, and that the count was good, without averring that the libel was published of and concerning the plaintiff, as editor of the weekly publication referred to, such fact being sufficiently shown by the libel itself. *Seemle*, also, that the count would have been good, without any special averment.

An information will lie, for contemptuous behaviour to persons in an official position.

Thus, where the College of Physicians summoned before them

a person who had been practising as a physician within seven miles of London, without their licence, and where such person, on appearing before the court, called the president and censors "a parcel of *qui tam* scoundrels," and afterwards wrote libellous letters to the chief members of the college, and was guilty of other indecorous conduct, he was convicted, upon an information laid against him by the college, setting out such behaviour.<sup>1</sup>

2. *Where no action lies.*

No action will lie for slander imputing that a physician has been guilty of criminal connection with a married woman, or generally, of incontinence, unless special damage be alleged, or unless the plaintiff allege in his declaration, that the words containing such imputation were spoken of and concerning the plaintiff, so carrying on such profession, and of and concerning him in such profession, and also show, in such declaration, in what manner such misconduct was connected by the speaker with that profession,<sup>2</sup> as that he had abused the confidence placed in him, by committing such act with a patient; nor, except under similar conditions, will an action lie for the words, "He is so steady drunk he cannot get business any more,"<sup>3</sup> or, "He is a twopenny bleeder."<sup>4</sup>

It is no libel to write of a physician that he is in the habit of meeting professed homœopathists in consultation, although the plaintiff should allege in his declaration that, in the opinion of the medical profession, meeting homœopathists in consultation is improper, against etiquette, and disgraceful. *Seemle*, it is no libel to say of a medical man, that he so conducted himself as to bring injury on himself professionally.<sup>5</sup>

In an American case, it was held not actionable to publish, in writing, of a druggist, "The above druggist refusing to contribute his mite, with his fellow-merchants, for watering Jefferson Avenue, I have concluded to water the avenue in front of his store for one week."<sup>6</sup>

Where a medical practitioner issued a pamphlet teeming with extravagant, exaggerated, and alarming statements, representing that he was in possession of a specific remedy for consumption, and that the medical profession had abandoned all hope of curing

<sup>1</sup> *R. v. Campbell*, 1 Camp. 91.

<sup>2</sup> *Ayre v. Craven*, 2 Ad. and E. 2; 4 Nev. & M. 220; 4 L. J., N. S., K. B. 35.

<sup>3</sup> *Anon.* (Amer.) 1 Ham. 83.

<sup>4</sup> *Foster v. Small* (Amer.), 3 Whart. 138.

<sup>5</sup> *Clay v. Roberts*, 9 Jur., N. S., 580; 8 L. T., N. S., 397.

<sup>6</sup> *The People v. Jerome*, 1 Manning's Mich. R. 142.

the disease, and denouncing the whole profession as ignorant, bigoted, and incapable, but not disclosing the system it professed to propound, and afterwards republished it, in a serial form, in the advertisement columns of newspapers, with prefaces purporting to be written by two independent medical men, who were proved to be the plaintiff's qualified paid assistants, such publication was held to be a matter of public interest, and a fair and proper subject for comment. A public writer, a medical man, in commenting thereon, represented the plaintiff as a quack, impostor, and also (alluding to the fact that he described himself as M.D., on account of a diploma obtained abroad) as like scoundrels who pass bad coin. It was held that no action would lie against the defendant, if the jury considered that the plaintiff was seeking to work unduly on the fears of those who might read his publications, and that the defendant wrote honestly, believing such to be the case, nor even if the defendant had fallen into error, in drawing inferences of imposture and bad intention, if he wrote honestly, not to gratify personal spite or professional malice, but to denounce what he honestly believed to be a system of quackery and imposture, and to vindicate the honour and the character of the profession, of which he was a member, and to do his duty fairly, and with reasonable moderation and judgment, to the public, in whose interest he was writing.<sup>1</sup>

In a case where B, the plaintiff, was medical officer to a union, and A, the defendant, was clerk to the guardians of such union, and C the relieving officer, a pauper was to be removed to another district, and had previously to be examined by B. A, in pursuance of directions from the guardians, called twice on B, for the purpose of getting him to see this pauper, but could not get B to do so. A then went to C, and asked him to try and get B to examine the pauper, telling him, at the same time, that when he saw B, on the preceding evening, he (B) was "not sober," whereupon C served B with a formal notice to examine the pauper, and B did so. In an action by B against A for slander, it was held that the communication between A and C was privileged, and that therefore no action would lie.<sup>2</sup>

In the same case, the question was raised, but not decided,

<sup>1</sup> *Hunter v. Sharpe* 4, F. and F. 983.

<sup>2</sup> *Sutton v. Plumridge*, 16 L. T., N. S., 741.



whether, if the words used were "as drunk as a sow," such expression would have been in excess of the occasion, and, consequently, a proof of malice.

In an action for libelling the plaintiffs, in their business of sellers of medicines, by publishing that the defendants had "crushed the self-styled hygeist system of wholesale poisoning pursued by the impudent and ignorant scamps and rot-gut rascals," the defendants pleaded and proved the conviction of two of the vendors of the plaintiffs' pills for manslaughter. It was held that the plea was sufficient and sufficiently proved, though it contained no special justification of the words "scamps" and "rascals," and though one of the victims died, notwithstanding he had taken fewer pills than the vendor recommended, it appearing that a larger number would only have accelerated his death; and it was also held that the defendants need not show that they had completely crushed the system.<sup>1</sup>

In an action by an apothecary, for slander, the following words, spoken of him in his profession, were held not actionable, as no fact was stated showing that the plaintiff was liable to an indictment. "He made up the medicines (for my child) wrong, through jealousy, because I would not allow him to use his own judgment." *Innuendo*: "That the plaintiff had intentionally, and from jealousy, and improper motives, made up the medicines which he had administered to the child, in a wrong and improper manner; and that such medicines were, to the plaintiff's knowledge, unfit and improper to be administered to the child."<sup>2</sup>

In the same case, it was held that the words, "Mr. P. told me that he (the plaintiff) had given my child too much mercury," would not, alone, constitute a cause of action.

In *Dunne v. Anderson*,<sup>3</sup> the plaintiff, a surgeon, and proprietor of a medical institute, called the Athenée, the objects of which did not appear, except as being for useful purposes of a medical and surgical nature, petitioned the House of Commons to abolish quackery and the sale of patent medicines, and, in the course of such petition, made certain remarks on the ingredients of which such patent medicines were composed. The defendant, the

<sup>1</sup> *Morrison v. Harmer*, 3 Bing., N. C., 759; 4 Sc. 524.

<sup>2</sup> *Edsall v. Russell*, 4 M. and G. 1090; 12 L. J., N. S., C. P. 4.

<sup>3</sup> 10 Moore, 407; 3 Bing. 88.



proprietor of a periodical publication called the *Cottage Physician and Family Advertiser*, in commenting upon and criticizing the plaintiff's petition, called the plaintiff a "humbugging petitioner," "an unknown and ignorant man," and his petition a "puff," and imputed to the plaintiff that he was profoundly ignorant of the science of his profession, and that of chemistry he knew nothing, and compared the *Athenée* to certain quack and empirical establishments. The plaintiff sued the defendant, charging him with libelling him in his profession of a surgeon, and the jury were directed that if they thought the tendency of the defendant's publication was to convey a reflection on the plaintiff, in his private practice, or to impute to him ignorance, in his character of a surgeon, it would be a libel, but that if it only imputed to him ignorance in the science of chemistry, it might not interfere with his general reputation as a surgeon, and that the question for their consideration was, whether the defendant had imputed to the plaintiff ignorance beyond that which could be fairly collected from the contents of his petition; but that if, professing to instruct and reform the world, the plaintiff had clearly demonstrated an incompetency for the task he had thought proper to impose upon himself, the defendant had committed no offence in warning the public against the incapacity and ignorance of such a self-constituted mentor; for that, when a man obtruded himself upon the public, by proposing measures affecting the community at large, his speculations were proper and legitimate objects of observation and temperate criticism. The jury found a verdict for the defendant. The court, however, without expressing any decided opinion on the merits of the case, granted a new trial, as the best course to be adopted under all circumstances, and at the second trial, the plaintiff recovered one farthing damages.<sup>1</sup>

### 3. *Evidence.*

In an action by a physician, for slander imputing the prescribing of improper medicines for a child, the defendant pleaded, as a justification, that the plaintiff prescribed corrosive sublimate in too large doses. The complaint under which the child laboured was water on the brain. The plaintiff was not allowed to put in books, which the medical witnesses stated were considered of authority in the profession, to show that such doses were

<sup>1</sup> See S. C. 1 Ry. and Moo. N. P. C. 287.

sanctioned, but such witnesses were allowed to give their judgment, and the ground of it, which might be, in some degree, founded on these books, as a part of their general knowledge. The plaintiff obtained a verdict, damages 40s.<sup>1</sup>

In an action by a medical practitioner, for slander comprising the following words, among others: "I know no such person as Dr. Collins (meaning plaintiff), but I do know such a person as Joseph Collins (meaning plaintiff), who calls himself Dr. Collins, but such a fellow I know to be an impostor (meaning an impostor, by exercising and practising physie) and a complete quack, and has not the slightest title to such an honour (meaning the being called 'Dr.,' meaning a Dr. of medicine), as I have made every inquiry at the different colleges. Dr. Collins (meaning plaintiff) is a quack and an impostor," the plaintiff alleged that he had been and was a physician, and exercised that profession in *England*, and on that account had been, and was, called "Dr.," meaning Dr. of medicine, and then stated that defendant slandered plaintiff, in his character of a physician practising in *England*, and denied his right to be called a Dr. of medicine. It was held that the plaintiff must prove that he was entitled to practise as a physician in *England*, and that such proof was not furnished by showing the fact of his having so practised, nor by showing that he had received the degree of Dr. of medicine at the Scotch University of St. Andrew's.

A medical man complaining of a slander on him in a particular character, must prove that he possesses that character, when the slander does not admit it.<sup>2</sup>

In an action by a surgeon, for libel calling an operation of lithotomy, performed by the plaintiff, a "tragedy," and imputing to him a want of skill, and stating that he performed such operation in an unsurgeon-like manner, and so as to cause unnecessary pain, and that the operation occupied fifty-five minutes, whereas it was usually performed by skilful surgeons in the average maximum time of six minutes, and also imputing that the plaintiff had been indebted for his elevation to the post of surgeon at Guy's Hospital to a corrupt system, and that, whatever might be his private virtues, he would never have been placed in a situation of such deep responsibility, had he not been the nephew of Sir Astley

<sup>1</sup> Collier v. Simpson, 5 Car. and P. 73.

<sup>2</sup> Collins v. Carnegie, 1 Ad. and E. 695; 3 Nev. and Man. 703.

Cooper, the defendant reasserted all the statements of the libel, and pleaded truth, as a justification, but did not plead the general issue. It was held, that it was incumbent on the defendant to make out the truth of his assertions, and that the plaintiff was not called upon to go into any evidence till that was done, nor had he the right to begin, with a view of proving the amount of his damages.<sup>1</sup>

In an action by a surgeon, for slander of him in his profession, imputing that he had lost his practice as a surgeon (in Dublin) by reason of repeated drunkenness, and ungentlemanly conduct, the plaintiff averred that he was medical attendant to a Poor-law union, and that the defendant was chairman of the board of guardians of the said union, and that the slander was uttered by the defendant, when presiding as such chairman, and went on to state, by way of special damage, that, in consequence of such words, the plaintiff had been injured in his practice as a surgeon, and that divers persons had ceased to consult him, and especially A. B. The defence merely traversed the special damage. The court refused to set the defence aside, but directed issues to be framed raising the material question.<sup>2</sup>

In an action by a physician, for a libel contained in the *Lancet*, a periodical work, the plaintiff was allowed to give in evidence publications brought out after issue joined, to show the motives of the defendant, who was the editor of the said work.<sup>3</sup>

Where plaintiff, who was medical officer of a dispensary district in Ireland, brought an action for libel imputing misconduct to him in his profession, the defendant pleaded a plea of privileged communication, on the ground that he was a Poor-law guardian, and made the communication (the subject-matter of the libel) to the Poor-law Board, in his capacity of guardian, *bonâ fide*, and further alleged that he had obtained the information upon which the communication was founded, from "certain faithworthy persons." It was held that the plea was embarrassing, as not containing the names of the persons who gave the information, and that the defendant must amend his plea, or the defence would be set aside.<sup>4</sup>

Where plaintiff, a surgeon, brought an action for slander contained in the words, "There have been many inquests had upon

<sup>1</sup> *Cooper v. Wakley*, 3 Car. and P. 474.

<sup>2</sup> *Custis v. Sandford*, 4 Irish Law Rep., N. S., 197.

<sup>3</sup> *Macleod v. Wakley*, 3 Car. and P. 311.

<sup>4</sup> *Godfrey v. Cross*, 12 Ir. C. L. Rep., N. S., 333.



persons who have died because he attended them," and the words actually used, as proved at the trial, were "Several have died that the plaintiff had attended, and there have been inquests held on them," he was allowed to amend, and the words, as amended, were held actionable, without any innuendo.<sup>1</sup>

Where plaintiff, a surgeon, and medical officer of a Poor-law union, brought an action for a libel imputing malapraxis in the case of two pauper patients, he was not allowed to give in evidence a book, kept by order of the Poor-law Board, containing accounts of his visits to the paupers, to show what had been his attendance upon and treatment of one of the paupers mentioned in the libel, on the ground that no public credit was given to such officer, in respect of his entries therein.<sup>2</sup>

Where a physician brings an action for words spoken of him in his profession, it is sufficient to aver that he used and exercised such profession, but if he aver that he is a physician, and has duly taken the degree of a doctor of physic, he must prove his degree, as stated, and the mere production in court of a diploma of doctor of physic, under the seal of one of the universities, is not, in itself, evidence of the plaintiff's having such degree, but it is necessary to prove, in the case of an original, that the seal affixed is the seal of the university, or, in the case of a copy, that the witness has compared it with the original;<sup>3</sup> but see *Pickford v. Gutch*,<sup>4</sup> where, in a similar case, the plaintiff averred that he had used and exercised the profession of a physician, and called a surgeon and apothecary to prove that he had prescribed for several years, and that he (witness) had acted under him as a physician, and the court held that the evidence was insufficient, and that the plaintiff must produce his diploma; on which, it was produced in court, and the plaintiff recovered.<sup>5</sup>

In an action for libel, part of the libel complained of imputed to the plaintiff that he had unduly, improperly, and unprofessionally advertised himself as a surgeon, and certain operations performed by him, in his professional capacity, to the public notice and attention, and then, after setting out a clause in a charter giving power to the College of Surgeons to expel any member guilty of unpro-

<sup>1</sup> *Southee v. Denny*, 1 Exch. 196; 17 L. J. Ex. 151.

<sup>2</sup> *Merrick v. Wakley*, 8 Ad. and E. 170; 8 C. and P. 283; 3 N. and P. 284; 7 L. J., N. S., Q. B. 190.

<sup>3</sup> *Moises v. Thornton*, 8 T. R. 303; 3 Esp. 4.

<sup>4</sup> Cited S. C., 8 T. R. 305.

<sup>5</sup> See, also, *Collins v. Carnegie*, *ut ante*, p. 226.



fessional conduct, proceeded as follows: "Here, then, is the power (meaning the power to expel the plaintiff, as having been guilty of the misconduct). Have the council the will, the courage, the honesty to exercise it? If unused now, can a case ever occur in which, with decency or any chance of success, they can avail themselves of a privilege which, if well exercised, may confer such great benefits on the profession?" The plaintiff, in his declaration, commenced by the averment that before, and at the time of the committing the grievances, he was, and still was, a surgeon, carrying on his profession as a surgeon, and member of the Royal College of Surgeons, which college had the power of expelling persons guilty of unprofessional conduct, and of unprofessionally advertising themselves and their cures, and went on to state that the libel was published of and concerning the plaintiff, and of and concerning him as such surgeon by profession, and of and concerning the said college and its said power. The defendant pleaded that the plaintiff was not, at the time when, &c., a surgeon practising or carrying on his profession as a surgeon, and member of the Royal College of Surgeons, having the power of expelling persons guilty of unprofessional conduct, and of unprofessionally advertising themselves and their cures.

It was held that the power of expulsion, as stated in the declaration, was material, and traversed by the plea, and that the statement of that power in the libel was not sufficient as evidence of such power.<sup>1</sup>

#### 4. *Special and General Damage.*

In an action by a surgeon for slander imputing that a female servant in the plaintiff's service had had a bastard child by him, special damage was laid that one D. had thereby refused to employ him as an accoucheur, and damages were also claimed for general injury to business. The words were proved to have been spoken by the defendant, in a conversation with D.

It was held that the plaintiff was entitled to recover such damage as the jury might consider he had sustained through the special damage laid, but not general damages arising from a decline of business, owing to repetitions of the slander—*Semble*: that, in such a case, he may not go into evidence of damage beyond the special damage laid.<sup>2</sup>

<sup>1</sup> *Wakley v. Healey and Cooke*, 4 Exch. 53.

<sup>2</sup> *Dixon v. Smith*, 5 Hurl. and N. 450; 29 L. J. Ex. 125.

### 5. *Costs.*

In an action by a surgeon, for defamatory words spoken of him in his profession, imputing to him acts of immorality, the defendants pleaded not guilty, and a justification. A verdict was found for the defendants, on the first plea, and for the plaintiff, on the second. It was held that the plaintiff was entitled to costs upon the second issue.<sup>1</sup>

### *Sec. III.—Privileged Communications.*

Medical practitioners are, of course, equally liable, with other men, to an action for defamation, in respect of any false and malicious communication, whether oral or written, made by them to the damage of another, in law or in fact; circumstances, however, frequently arise where, from the nature of their employment, it becomes their duty or interest to make some communication prejudicial to the character or conduct of another, and in such cases, where the occasion on which the communication was made rebuts the presumption of malice, which the law infers from such a statement, such communication is said to be privileged, and therefore, in order to sustain an action for defamation, the plaintiff must prove that the defendant was actuated by express or actual malice—that is, malice independent of the occasion on which the communication was made.<sup>2</sup>

The legal canon is, that a communication made *bonâ fide*, upon any subject-matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest or duty, although it contain criminary matter, which, without this privilege, would be slanderous and actionable.<sup>3</sup> This applies, moreover, though the duty be not a legal one, but only a moral or social duty, of imperfect obligation, and also where the communication is made to a person not in fact having such interest or duty, but who might reasonably be, and is supposed by the party making the communication to have such interest or duty.<sup>4</sup> Even where the evidence of duty is not present to the mind, but the speaker is

<sup>1</sup> *Skinner v. Shoppee*, 8 Sc. 275; 6 Bing. N. C. 131; 9 L. J., N. S., C. P. 96.

<sup>2</sup> See *Starkie on Slander*, 516.

<sup>3</sup> *Harrison v. Bush*, 5 El. & B. 344.

<sup>4</sup> S. C.

impelled by a sense of propriety, on which he does not pause to reflect, and which he refers to no special motive, nevertheless, if his conduct in speaking the words be within the occasion of interest or of duty which is capable of protecting, the communication will be considered privileged.<sup>1</sup>

The following cases, in which statements, with alleged defamatory meanings, made by medical men in the discharge of their duties, have been held to be privileged, will sufficiently explain the principles upon which rests the doctrine of privileged communications:—

In *Humphreys v. Stilwell*,<sup>2</sup> the plaintiff, a butcher, brought an action for slander against the defendant, who was medical officer of a college, the words charged being that the plaintiff sold meat by the yard, and had been hooted out of the market: innuendo, that he sold bad meat. The plaintiff supplied the college with meat, and the words complained of were spoken by the defendant to the steward, in the course of some conversation as to one or two cases of illness among the boys, and complaints about the meat on their part. The steward, who was a witness for the plaintiff, stated that it was his duty to examine the meat, and that no bad meat had, to his knowledge, been received from the plaintiff. The defendant stated that he considered it his duty, as medical officer, to speak on the subject of the quality of the meat supplied to the school, that he had heard of complaints, by the boys, of bad meat, and that the nature of the illness of one or two of the boys, with the absence of any other assignable cause, suggested to his mind the notion that it might be the meat. There was no evidence of actual malice, and the communication was held privileged.

In *Murphy v. Kellett*,<sup>3</sup> the plaintiff alleged that he carried on the business of a wine merchant, at Naas, and had, in that capacity, furnished to the Poor-law guardians of the union of Naas a proposal to supply to them wine of a certain quality, as per sample, and at a certain price, and that, at the time the proposal and sample were under the consideration of the guardians, the defendant spoke and published of him, and of him in his trade and business as a wine merchant, the words: "No matter what price is given for wine, in Naas, it will be South African sherry" (meaning that if the proposal of the

<sup>1</sup> See per Pigot, C.B., in *Bell v. Parke*, 10 Ir. C. L. Rep., N. S., 288.

<sup>2</sup> 2 F. & F. 590.

<sup>3</sup> 13 Ir. C. L. Rep., N. S., 488.



plaintiff for the supply of wine to the guardians should be accepted, he would, in performance of his part of the contract, supply a wine different from the sample, and of worse quality and price than as shown). The defendant pleaded, in addition to other pleas, that, before and at the time of the speaking of the words, he was a paid *medical officer of the Poor-law union* of Naas, and, as such, it was part of his duty to see that the wines and spirits, provided by the guardians for the use of the hospitals, should be good and proper for that purpose, and that it was also part of his duty to report to the guardians the probable quantities which would be likely to be required and used by him, and to express to the guardians his views and opinions of and concerning the suitability of the several qualities and descriptions of wines provided, or to be provided, for such purposes, as well as to inform the guardians if any of the wines and spirits, so provided by them for such purpose, were bad or unsuitable in quality, or otherwise; and that, before the speaking of the words, proposals for the supplying of the workhouse with wine and spirits had been advertised for in the public newspapers; and that the plaintiff had sent in a proposal for the supplying of wine; and that, at the time of the speaking of the words, the proposals were under the consideration of the guardians; and that the defendant, as such medical officer, and in the discharge of his duty, attended; and that he spoke the words *bonâ fide*, and honestly, in the discharge of his duty, and without malice, and that, at the time he so spoke and published the words, he believed them to be perfectly true in substance and in fact. The plea, on demurrer, was held to be good, inasmuch as it set forth an occasion which warranted the interference of the defendant, and was therefore privileged, and contained averments that he acted without malice, and spoke the words, believing them to be true.

On the same principle, where a medical man gives a discharged assistant or servant a character, what he says or writes upon the subject, to a person *bonâ fide* inquiring, is a privileged communication, unless malice in fact can be directly proved; nor is it sufficient to show that the character was false, if given *bonâ fide*.



*Sec. IV.—Protection from Unregistered and Unqualified Practitioners.*

The Medical Act, 1858,<sup>1</sup> which institutes a system of registration for qualified medical practitioners, not only confers certain privileges upon all persons duly registered according to its provisions, but also protects them in the sole and exclusive possession of such privileges, by imposing numerous disabilities upon unregistered persons.

No person is now entitled to recover any charge, in any court of law, for any medical or surgical advice or attendance, or for the performance of any operation, or for any medicine which he has both prescribed and supplied, unless he can prove, upon the trial, that he is registered under the Act.<sup>2</sup>

Whenever, in any Act of Parliament, the words “legally qualified medical practitioner,” or “duly qualified medical practitioner,” or any words importing a person recognised by law as a medical practitioner, or member of the medical profession, are used, such words cannot be construed to mean an unregistered person.<sup>3</sup>

No unregistered person may hold any appointment as a physician, surgeon, or other medical officer, either in the military or naval service, or in emigrant or other vessels, or in any hospital, infirmary, dispensary, or lying-in hospital, not supported wholly by voluntary contributions, or in any lunatic asylum, gaol, penitentiary, house of correction, house of industry, parochial union, workhouse, or poorhouse, parish union, or other public establishment, body, or institution, or to any friendly or other society

<sup>1</sup> 21 & 22 Vict. c. 90.

<sup>2</sup> *Ib.* s. 32. It has been decided, however, that this section does not prevent an unregistered person from recovering charges for advice, &c., given before the Act came into operation, but this question is not likely to arise again. See *Wright v. Greenroyd*, 1 Best and S., 758. See also *Thistleton v. Frewer*, 31 L. J. Ex. 230. Before the passing of the Medical Act, it was decided that a man who was not a regular practitioner, but who professed to be able to effect a cure, by means of sovereign remedies, within a specified time, and induced another person to employ him, by false and fraudulent professions of his skill, could not recover either for his medicines or attendance. *Hupe v. Phelps*, 2 Stark, 480. See also *Kannen v. M'Mullen*, 1 Peake 83.

<sup>3</sup> 21 & 22 Vict. c. 90, s. 34.

for affording mutual relief in sickness, infirmity, or old age, or as a medical officer of health.<sup>1</sup>

No certificate required, by any Act, from any physician, surgeon, licentiate in medicine and surgery, or other medical practitioner, is valid, if signed by an unregistered person.<sup>2</sup>

Any person wilfully and falsely pretending to be, or taking or using the name or title of a physician, doctor of medicine, licentiate in medicine and surgery, bachelor of medicine, surgeon, general practitioner, or apothecary, or any name, title, addition, or description, implying that he is a registered person, or that he is recognised by law as a physician, or surgeon, or licentiate in medicine and surgery, or a practitioner in medicine, or an apothecary, may, upon a summary conviction for any such offence, be fined a sum not exceeding £20.<sup>3</sup>

<sup>1</sup> 21 & 22 Vict. c. 90, s. 36. Any person, however, not a British subject, who has obtained from any foreign university a degree or diploma of doctor in medicine, and who has passed the regular examinations entitling him to practise medicine in his own country, may act as the resident physician or medical officer of any hospital established exclusively for the relief of foreigners in sickness, provided that he be engaged in no medical practice, except as such resident physician or medical officer. 22 Vict. c. 21, s. 6.

<sup>2</sup> 21 & 22 Vict. c. 90, s. 37.

<sup>3</sup> *Ib.* s. 40. To warrant a conviction, however, there must be unequivocal evidence that the party *wilfully* and *falsely* pretended. It is not enough, for instance, to prove that his name does not appear in the medical Register, or to prove that he is called a surgeon by persons whom he has attended professionally, in the absence of evidence to show that he has done so on his own account, and for his own profit. *Pedgrift v. Chevallier*, 8 C. B., N. S., 240; 29 L. J. M. C. 225.

It is a question of fact, for magistrates to decide, and not one of law, to be reserved, whether, by the use of the word "surgeon," coupled with "dentist," or "mechanical dentist," or "chiroprapist," or such like titles, and by the other facts in each case, the party proceeded against is guilty of this offence. *Ladd v. Gould*, 1 L. T., N. S., 325. See also *Ellis v. Kelly*, 6 Hurl. and N. 222; 30 L. J. M. C. 35, where a person holding a German medical diploma, and registered as a surgeon and apothecary, but not as a doctor of medicine, and using the title of "Dr.," was held not to have rendered himself liable to the penalty.

In this case it was laid down by Bramwell, B., that a registered member of the College of Surgeons, or of the Apothecaries' Company, *wilfully* and *falsely* calling himself a doctor of medicine, would be liable to the penalty. See also *Pedgrift v. Chevallier*, 8 C. B., N. S., 246.

In *Steele v. Hamilton* (3 L. T., N. S., 322) an unregistered person was summoned upon an information laid under this section, and it was proved that he had signed a certificate of death, with the heading "medical certificate," and the signature "John Hamilton, Botanic Surgeon, Boston, U.S." It was also proved that over the door of the house where he carried on his business was painted, in large legible characters, "J. Hamilton, Surgeon," and, in very small letters, underneath, "Boston,

Any person who wilfully procures, or attempts to procure himself to be registered, by making or producing, or causing to be made or produced, any false or fraudulent representation or declaration, either verbally or in writing, and any person who aids and assists him therein, is guilty of a misdemeanor, in England and Ireland, and in Scotland, of a crime and offence punishable by fine or imprisonment, and may, on conviction thereof, be sentenced to be imprisoned for any term not exceeding twelve months.<sup>1</sup> A like penalty is imposed upon any registrar wilfully making, or causing to be made, any falsification in any matters relating to the Register.<sup>2</sup>

The above-mentioned disabilities attach to all unregistered persons, whether qualified or unqualified; but a qualified medical practitioner, although unregistered, cannot be proceeded against for the penalty imposed by Section 40 of the Medical Act, as he cannot be said to *wilfully* and *falsely* pretend.

Medical men are still further protected, in the exercise of their profession, against unregistered persons, as well as against quacks, and others, who take upon themselves to practise without any qualification, by the powers which the various medical and surgical corporate bodies possess, by charters, or under Acts of Parliament, of proceeding for penalties against those who practise within their jurisdiction, without having first obtained from them their diploma or licence.<sup>3</sup>

Thus, no person may practise medicine within the City of London, or within seven miles round the same, without a licence

U.S., not registered in England," and that upon a glass panel of the door was painted, "J. Hamilton, anti-registered Surgeon," the word "anti-registered" being written, in small letters, in scroll-work, between the name and the profession, and being illegible, except upon close inspection. The magistrate dismissed the information, on the ground that there was not sufficient evidence to warrant a conviction, under the section, and his decision was, on appeal, held good.

<sup>1</sup> 21 and 22 Vict. c. 90, s. 39. For an indictment for offences under this section, with a count for conspiracy, see 10 Cox, C. C. App. 50.

<sup>2</sup> *Ib.* s. 38.

<sup>3</sup> These powers are no longer of any avail against persons duly registered, and practising according to their registered qualification or qualifications, but, as they are not expressly taken away by the Medical Act, they might, it is presumed, be still enforced against unqualified practitioners, or against qualified but unregistered practitioners, not having the requisite licence or diploma, or even, under certain circumstances, against registered practitioners, who practise in any branch of the profession to which their registered qualification does not apply.



from the College of Physicians, under a penalty of £5 for every month he may continue to practise;<sup>1</sup> and it has been held that this applies even to a graduate doctor of physic of one of the universities,<sup>2</sup> and to a person practising under letters patent from the Crown.<sup>3</sup>

Where, however, an apothecary, being a freeman of London, attended a patient, and made up and administered proper medicines to him, but without having a licence from the Faculty, or the direction of a physician, or demanding or taking any fee for his advice, it was held that this did not amount to a practising, within the Act.<sup>4</sup>

No forfeiture attaches to any person so practising within the district for less time than a month.<sup>5</sup> In actions brought by the College to recover penalties incurred under the Act, the winning side are entitled to costs.<sup>6</sup>

This right of action has been rarely exercised, of late years.

It was, moreover, formerly, a misdemeanor for any person, not being a graduate of Oxford or Cambridge, to practise in physic through England, until he had been examined by the president and three of the elects of the College of Physicians, and received from them letters-testimonial,<sup>7</sup> but this function of the elects was virtually suspended by the Medical Act, and, in 1860, the office and name of elects were abolished.<sup>8</sup>

By the statute 3 Hen. VIII. c. 11, it was enacted that no person within the City of London, or within seven miles of the same, should take upon him to exercise and occupy as a physician or surgeon, without being first examined, approved, and admitted, in a manner therein specified,<sup>9</sup> and that no person out of the said

<sup>1</sup> 14 & 15 Hen. VIII. c. 5. See also, generally, *Coll. of Phys. v. Butler*, Sir W. Jones, 261; *Do. v. Salmon*, 5 Mod. 327; *Do. v. Rose*, 6 Mod. 44; *Do. v. Bush*, 4 Mod. 47; *Do. v. Basset*, 12 Mod. 10; *Do. v. Talbois*, 1 Ld. Ray, 153; *Do. v. —*, 2 Show, 166; *Do. v. West*, 10 Mod. 353; *Do. v. Levett*, 1 Ld. Ray, 472; *Do. v. Needham*, 3 Keb. 672; and *ante*, pp. 27, 28.

<sup>2</sup> *Coll. of Phys. v. Levett*, 1 Ld. Ray, 472; *Do. v. West*, 10 Mod. 353; *Bonham's Case*, 4 Coke, 355.

<sup>3</sup> *Coll. of Phys. v. Bush*, 4 Mod. 47.

<sup>4</sup> 14 & 15 Hen. VIII. c. 5. *Rose v. Physicians' Coll.* 5 Bro. P. C. 553.

<sup>5</sup> *Bonham's Case*, 4 Coke, 368.

<sup>6</sup> *Coll. of Phys. v. Harrison*, 9 B. and C. 524.

<sup>7</sup> 14 & 15 Hen. VIII. c. 5. See also per Denman, C. J., in *Collins v. Carnegie*, 1 Ad. and E. 704.

<sup>8</sup> 23 & 24 Vict. c. 66, s. 5, and *ante*, p. 28.

<sup>9</sup> S. 1.



city and precinct of seven miles of the same, should take upon him so to exercise and occupy, in any diocese within the realm, unless he had been so admitted, or had obtained letters-testimonial from the bishop of the diocese;<sup>1</sup> and, by the same Act, offenders against either of these provisions were subjected to a penalty of £5 for every month they continued so to practise, which penalty might be sued for by any person, by action of debt, in which no wager of law nor protection was to be allowed. There was, however, a saving of the privileges of Oxford and Cambridge.<sup>2</sup>

By the statute 34 and 35 Hen. VIII. c. 8, all persons were allowed to administer medicines for outward sores, or drinks for the stone, strangury, or ague, but it was held<sup>3</sup> that this applied only to those who ministered the same of pity and charity, and did not give liberty to any person practising for lucre or profit.

By a charter of 5 Car. I., the jurisdiction of examining persons desirous to practise as surgeons was conferred on the College of Surgeons, and all persons were prohibited from practising surgery for lucre or profit, in London, or within seven miles, unless they had been so examined, under a penalty for so doing.

The statute 18 Geo. II. c. 15, by which the surgeons and barbers of London were made two separate corporations, recites this charter, and confers on the Company of Surgeons all the liberties, privileges, franchises, powers, and authorities granted by such charter.<sup>4</sup> After the passing of this Act, the company became dissolved or suspended, but was re-incorporated, with the same privileges, by a charter granted in the 40th year of Geo. III.

There are no reported cases where the penalty of £5 per month has been sued for, under 3 Hen. VIII. c. 11, but, before the passing of the Medical Act, the statute has been pleaded in answer to claims for work and labour performed as a surgeon, on the ground that the legislature intended to prohibit persons from so practising, with the view of affording protection to the public, and that, therefore, the imposing the penalty rendered it illegal so to practise without having complied with the provisions of the Act.<sup>5</sup>

<sup>1</sup> S. 2.

<sup>2</sup> S. 3.

<sup>3</sup> Le Colledge de Physitians' Case, Littleton, 349.

<sup>4</sup> S. 8, and see *ante*, p. 51.

<sup>5</sup> See *Gremaire v. Le Clerc Bois Valon*, 2 Camp. 143; *D'Allex v. Jones*, 2 Jur., N. S., 979, and the note to *Little v. Oldaker*, Car. and M. 371.

A penalty of £20 may be inflicted, for every such offence, upon any person acting or practising as an apothecary, in any part of England or Wales, without having obtained a certificate from the Apothecaries' Company, and a penalty of £5, for every such offence, upon any person acting as an assistant to any apothecary, to compound and dispense medicines, without having obtained such certificate.<sup>1</sup>

In an action for penalties, under this statute, it is not necessary, on the part of the plaintiffs, to prove that the party has not obtained his certificate of qualification, the *onus* lying on him to show that he has.<sup>2</sup>

It is doubtful whether a fresh penalty attaches for every case of acting as an apothecary towards each different patient, or whether only one penalty attaches for a continued practising.<sup>3</sup>

An action for the penalty may be maintained in the county courts.<sup>4</sup>

The Act does not affect the business of chemists and druggists,<sup>5</sup> but a chemist who not only sells, but also applies and administers medicines, in the ordinary course of attending patients, practises as an apothecary, and is not exempted from the penalty.<sup>6</sup>

A person authorized to practise as a physician, by diploma from a Scotch university, but not possessing the certificate from the Apothecaries' Company, is liable to the penalty,<sup>7</sup> as is an unqualified

<sup>1</sup> 55 Geo. III. c. 194, s. 20. This does not apply to those who were actually practising as apothecaries, or acting as assistants to apothecaries, respectively, previously to August 1, 1815. As to proof of such a practising, see *Apoth. Co. v. Warburton*, 3 B. and Ald. 40; *Apoth. Co. v. Roby*, 5 B. and Ald. 949; *Thompson v. Lewis*, Moo. and M. 255; *Woodward v. Ball*, 6 C. and P. 577. Nor does it apply to any person who held a commission or warrant, as surgeon or assistant-surgeon in the Navy, or Army, or in the service of the East India Company, which bore date prior to August 1, 1826 (see 6 Geo. IV. c. 133, s. 4; *Steavenson v. Oliver*, 8 M. and W. 234; *Milbank v. Bryant*, 6 Jur. 931), nor to a person holding a licence granted by any Scotch or Irish licensing body, which, at the time of the passing of the Medical Act, entitled the holder to exercise the functions of an apothecary in any part of Scotland or Ireland. For form of indictment, see 2 Cox, C. C. App. 23.

<sup>2</sup> *Apoth. Co. v. Bentley*, 1 Car. and P. 538.

<sup>3</sup> See *Apoth. Co. v. Burt*, 5 Ex. 363; 19 L. J. Ex. 334; *Apoth. Co. v. Bentley*, *ut supra*.

<sup>4</sup> *Apoth. Co. v. Burt*, *ut supra*.

<sup>5</sup> S. 28.

<sup>6</sup> *Apoth. Co. v. Greenhough*, 1 Q. B. 799; 11 L. J. Q. B. 156, and see *ante*, p. 209.

<sup>7</sup> See *Collins v. Carnegie*, 1 Ad. and E. 695; 3 L. J., N. S., K. B. 196; *Apoth. Co. v. Collins*, 4 B. and Ad. 604; 5 Car. and P. 519.

person who advises patients, and makes up and sells to them the medicines which he has ordered, although he does not, and cannot make up physicians' prescriptions.<sup>1</sup>

Where A., who had no certificate, bound himself apprentice to an apothecary, who resided eight miles from H——, and the apothecary then took a house at H——, in which A. resided, and attended patients, the apothecary coming over occasionally, and being consulted about the patients by A., it was held that this was such a practising by A. as subjected him to the penalty.<sup>2</sup> A surgeon may administer medicines in the cure of a surgical case, without being subject to the penalty, but he has no right to do so in the case of internal diseases not requiring surgical treatment, such as fever or consumption.<sup>3</sup>

In Ireland, no apothecary may take an apprentice, foreman, or shopman, who has not been examined by the Apothecaries' Company, and obtained from them a certificate, neither may any person open shop for the retail of medicine, or act in the art or mystery of an apothecary, unless he has undergone a like examination, and obtained a proper certificate, and the company have the power of recovering a penalty of £20 from any person offending against these provisions.<sup>4</sup>

Very similar powers are possessed, within certain districts, by most of the medical and surgical corporate bodies in Scotland and Ireland.

Unqualified practitioners are not allowed to escape the responsibility imposed upon medical men with regard to the treatment of their patients, for neither in civil nor criminal proceedings for maltreatment, is any distinction recognised between them. In such cases, the ground of action is the actual maltreatment, whether through ignorance or negligence, and any person who deals with the life or health of her Majesty's subjects, is liable to such an action, if he treat the person entrusted to his care negligently or improperly.<sup>5</sup>

It is the custom with a certain low class of quacks, to exhibit in

<sup>1</sup> *Apoth. Co. v. Allen*, 4 B. and Ad. 625; 1 N. and M. 413.

<sup>2</sup> *Apoth. Co. v. Greenwood*, 2 B. and Ad. 708. See also *Brown v. Robinson*, 1 Car. and P. 264.

<sup>3</sup> *Apoth. Co. v. Lotinga*, 2 Moo. and R. 495.

<sup>4</sup> 31 Geo. III. c. 34 (Irish); 21 & 22 Vict. c. 90, s. 55. See also *Apoth. Hall v. Nicolls*, 7 Ir. Law Rep. 390; *Apoth. Hall v. Calvert*, 6 Ir. Law Rep. 186.

<sup>5</sup> See, generally, *post*, chap. 7, sec. 1.



their windows, pictures intended to display the nature of particular diseases, and the beneficial effects produced either by consulting them, or by making use of the medicines vended by them for the cure of such complaints. It has been decided that no man has a right to expose such pictures in or upon a public highway, if they constitute a disgusting and offensive exhibition, although his object may be innocent or laudable, and there may be nothing indecent or immoral in such pictures. Thus, where a herbalist exhibited in his shop-window, in the High-street at Chatham, two large coloured pictures, of the size of life, each representing a man (half length) naked to the waist, the one covered with sores and eruptions, the other represented cured, he was held guilty of a nuisance.<sup>1</sup>

A person assuming the name of a well-known medical man, and inducing a patient to buy medicines from him, by falsely pretending that he is such medical man, may be convicted for obtaining money under false pretences.<sup>2</sup>

A medical man has a sufficient property in his own name to prevent another from falsely passing off, injuriously to his reputation, medicines as personally prescribed by him, which might cause a total destruction of his professional character.<sup>3</sup>

#### *Sec. V.—Exemptions.*

The earliest statute by which exemptions from bearing office were granted to members of the medical profession, was passed in the year 1513,<sup>4</sup> by which the wardens and fellows of the Surgeons' Company, and also all barber-surgeons, not exceeding twelve at one time, admitted and approved to exercise the mystery of surgeons, were discharged from constableness, watch, and all manner of office, from bearing armour, and from all inquests and juries<sup>5</sup>

<sup>1</sup> *Reg. v. Grey*, 4 F. and F. 73.

<sup>2</sup> *Reg. v. Bloomfield*, Car. and M. 537.

<sup>3</sup> *Per Malins, V. C., Springhead Spinning Co. v. Riley* (Law Rep. 6 Eq. 561), reversing the decision in *Clark v. Freeman* (11 Beav. 112), where Lord Langdale refused to interfere to prevent a vendor of a quack medicine from advertising such medicine in such a manner as to induce the public to believe it was sanctioned by the plaintiff, a physician of eminence, and sold by the defendant, as his agent.

<sup>4</sup> 5 Hen. VIII. c. 6.

<sup>5</sup> This was repealed, as far as it related to juries, by 6 Geo. IV. c. 50, s. 62. See, however, s. 2 of the latter Act.



within the City of London, the grounds for such exemption, as stated in the Act, being, that their number was so small, in regard of the great multitude of patients.

In 1522,<sup>1</sup> the charter granted in 1518 to the Corporation of Physicians in London, by which the president, and every one of the members of the college practising physic were exempted from serving upon any assize, jury, inquest, inquisition, attain, or other recognizance, within the City of London and its suburbs, before the mayor, sheriff, or coroners, and from being summoned for such purpose by any of his officers or ministers, although such jury, inquisition, or recognizance should be summoned upon a writ of right, was ratified and confirmed in the most ample manner.

In 1540,<sup>2</sup> the president, commons, and fellows of the Corporation of Physicians in London, and their successors, were discharged from keeping any watch or ward, in the City of London or the suburbs, and from serving as constable, or any other officer therein.

In 1669, a practising physician in London having been appointed constable in Berks, by reason of a house which he had there, it was held that he had no remedy, at common law, for his discharge, for that there were no precedents of the kind, and his calling was private.<sup>3</sup>

In 1540, the same year in which the physicians were discharged from keeping watch and ward in London, the barbers and surgeons of London were made one company,<sup>4</sup> and incorporated, and all persons of the new company, lawfully admitted and approved to occupy surgery, were exempted from bearing arms, and being on watches or inquests.

It was adjudged, however, in the year 1811, that this exemption was confined to such as had been examined by the Bishop of London, or Dean of St. Paul's, and duly licensed to practise surgery, and did not apply to a member of the Barbers' Company.<sup>5</sup>

In 1694,<sup>6</sup> apothecaries within London and seven miles thereof, being free of the Society of Apothecaries of London, and duly

<sup>1</sup> By 14 & 15 Hen. VIII. c. 5.

<sup>2</sup> By 32 Hen. VIII. c. 40, s. 1.

<sup>3</sup> See Dr. Poordage's case, 1 Mod. 22; 2 Keb. 578, and (S.C.) R. v. Porditch, Sid. 431, where it is stated that he was discharged. See, however, Pindar v. Darby, Comb. 31, where Wythens said he could not take the case of Poordage, in *Siderfin*, to be good law.

<sup>4</sup> By 32 Hen. VIII. c. 42, s. 1.

<sup>5</sup> R. v. Chapple, 3 Camp. 91.

<sup>6</sup> 6 & 7 Will. and Mar. c. 4.

examined and approved, were exempted from the offices of constable, scavenger, overseer of the poor, and all other parish, ward, and leet offices, and from serving on juries<sup>1</sup> or inquests, so long as they should use and exercise the art of an apothecary; and, by the same Act, country apothecaries who had served a seven years' apprenticeship, according to 5 Eliz. c. 4, were exempted from the like offices and duties.

In 1745,<sup>2</sup> the union between the surgeons and the barbers of London was dissolved, by statute, the surgeons were constituted a distinct body corporate, and exemption was granted to all freemen of the company who already had been, or thereafter should be, examined and approved, pursuant to the rules and orders of the said company, from the offices of constable, scavenger, overseer of the poor, and all other parish, ward, and leet offices, and from being put into or serving upon any jury or inquest, so long as they should use and exercise the art or science of surgery, and no longer.

To the master, governors, and commonalty of the barbers' company were granted the same liberties, privileges, &c., as were to be enjoyed by the surgeons' company, with respect to everything but surgery, and it was held, in the year 1841, that this did not confer upon them exemption from serving as jurymen in the Central Criminal Court, but that such exemption was confined to the local courts of the city, viz., those holden before the mayor, the sheriff, or the coroner.<sup>3</sup>

In 1825,<sup>4</sup> the enactments exempting the wardens and fellows of the old Surgeons' Company, the Barber-surgeons, and Apothecaries, from serving on juries, were repealed, and it was enacted<sup>5</sup> that all members and licentiates of the Royal College of Physicians in London, actually practising; all surgeons, being members of one of the Royal Colleges of Surgeons in London, Edinburgh, or Dublin, and actually practising; and all apothecaries certificated by the court of examiners of the Apothecaries' Company, and actually practising, should be absolutely freed and exempted from being returned, and from serving on any juries and inquests whatsoever.

By the Medical Act, 1858,<sup>6</sup> it is enacted that every person duly

<sup>1</sup> This act was made perpetual, by 9 Geo. I. c. 8, s. i., but repealed, so far as it related to juries, by 6 Geo. IV. c. 50, s. 62. See, however, s. 2 of last-mentioned Act.

<sup>2</sup> By 18 Geo. 2, c. 15.

<sup>3</sup> *In re* White, Car. and M. 189.

<sup>4</sup> By 6 Geo. IV. c. 50, s. 62.

<sup>5</sup> *Ib.* s. 2.

<sup>6</sup> 21 & 22 Vict. c. 90, s. 35.

registered according to its provisions, whether as a physician, surgeon, or apothecary, shall be exempt, if he so desire, from serving (I.) on all juries and inquests whatsoever; (II.) all corporate, parochial, ward, hundred, and township offices; (III.) in the militia; and that the name of any such person may not be returned in any list of persons liable to serve in the militia, or in any such office as aforesaid.

In the Juries' Act, 1870,<sup>1</sup> the following persons are, amongst others, declared exempt from serving on juries:—

1. Members and licentiates of the Royal College of Physicians in London, if actually practising as physicians.

2. Members of the Royal Colleges of Surgeons in London, Edinburgh, and Dublin, if actually practising as surgeons.

3. Apothecaries certificated by the court of examiners of the Apothecaries' Company, and all registered medical practitioners, and registered pharmaceutical chemists, if actually practising as apothecaries, medical practitioners, or pharmaceutical chemists, respectively.<sup>2</sup>

Physicians, surgeons, apothecaries, and chemists, may use spirits or spirituous liquors, in the preparation or making up of medicines for sick, lame, or distempered persons, without taking out a licence for that purpose.<sup>3</sup> They may not, however, use methylated spirit, or any derivative thereof, in the manufacture or preparation of medicines capable of being used internally, under a penalty of £100. This does not apply to sulphuric ether, or chloroform.<sup>4</sup>

## *Sec. VI.—The Study and Practice of Anatomy.*

The law now directly recognises and sanctions the anatomical examination of human bodies, and requires all persons who are about to enter upon the study or practice of anatomy to take out a licence, and to conform to certain rules and regulations. The state of things which existed before the passing of the Anatomy Act,<sup>5</sup> in the year 1832, and the crimes, originating in the price

<sup>1</sup> 33 & 34 Vict. c. 77.

<sup>2</sup> *Ib.*

<sup>3</sup> See 16 Geo. II. c. 8, s. 12. This section applies to later Acts on the same subject, and was left unrepealed by the Statute Law Revision Act, 1867. See also 9 Geo. II. c. 23, s. 12.

<sup>4</sup> 29 & 30 Vict. c. 64, s. 8.

<sup>5</sup> 2 & 3 Will. IV. c. 75.



obtained for human bodies, which gave rise to legislation on the subject, are well known, and are, moreover, very clearly expressed in the preamble to the Act, which runs as follows:—"Whereas, a knowledge of the causes and nature of sundry diseases which affect the body, and of the best methods of treating and curing such diseases, and of healing and repairing divers wounds and injuries to which the human frame is liable, cannot be acquired without the aid of anatomical examination, and whereas the legal supply of human bodies for such anatomical examination is insufficient fully to provide the means of such knowledge; and whereas, in order further to supply human bodies for such purposes, divers great and grievous crimes have been committed, and lately murder; for the single object of selling, for such purposes, the bodies of the persons so murdered; and whereas, therefore, it is highly expedient to give protection, under certain regulations, to the study and practice of anatomy, and to prevent, as far as may be, such great and grievous crimes and murder, as aforesaid: be it therefore enacted, &c."

Before the passing of this Act, dissection was not considered unlawful, if carried on so as not to create a nuisance, but the only provision made by the legislature for the cultivation and practice of the art, was by making grants of a certain number of the bodies of persons executed for felony, to the College of Surgeons, and the College of Physicians. The first of these grants was made in 1540, when permission was given to the masters or governors of the mystery and commonalty of Barbers and Surgeons of London "to take, annually, four persons put to death for felony, for anatomies, and to make incision of the same dead bodies, or otherwise to order the same, after their discretions, at their pleasure, for their further insight and better knowledge, instruction, insight, learning, and experience, in the science or faculty of surgery." In 1565, Queen Elizabeth granted to the College of Physicians the bodies of four felons, executed in Middlesex, "that the president, or other persons appointed by the college, might, observing all decent respect for human flesh, dissect the same." In 1663, the number of bodies so granted was, by Charles II., increased to six. In 1752, it was enacted<sup>1</sup> that the bodies of murderers executed in London or Middlesex should be immediately conveyed to the hall of the Surgeons'

<sup>1</sup> 25 Geo. II. c. 37.



Company, to be dissected and anatomized by the said surgeons, and the attempt to rescue any such body was made a felony.

The chief hindrances to the pursuit of the science of anatomy, however, have arisen from ignorance and superstition. All the earlier statutes in which the disinterring of the dead is mentioned, connect the idea with the exercise of witchcraft, enchantment, charms, or sorcery.<sup>1</sup> The aversion to dissection, generally entertained by all classes, up to a very recent date, can hardly be wondered at, when we consider that the very means employed by the legislature for promoting and encouraging the study served to connect the notion in the public mind, with that of extraordinary punishment for crimes more than usually atrocious. One person we find rising superior to the vulgar prejudices of his time. So far back as the year 1769, Bentham, the philosopher, left his body, by will, for public dissection, and in the year of his death, 1832, he solemnly confirmed this legacy.

At the present day, the importance of the science of physiology is fully recognised by all classes of society, and the old feeling of repugnance to allowing a medical examination of the body, after death, has almost entirely disappeared.

To disinter a dead body, for the purpose of dissection, is still an indictable offence, and punishable with fine or imprisonment, or both.<sup>2</sup>

It is well to remember, also, that a medical man, or other person, receiving a human body, not according to the provisions of the Act, which bears upon it the marks of violence, or such indicia as to raise a reasonable suspicion that the person came to his death by foul means, and concealing the fact, is liable to be indicted, as an accomplice in the crime.

The following are the provisions by which the study and practice of anatomy are now regulated.

(Whenever the words "person" and "party" are used, they

<sup>1</sup> See 1 Jac. i. c. 12, s. 2; 33 Hen. VIII. c. 8; 5 Eliz. c. 16.

<sup>2</sup> See *R. v. Gilles*, Russ. and Ry. 366, n.; *R. v. Lynn*, 2 T. R. 733; and see *R. v. Sharpe*, 26 L. J. M. C. 47, where it was held a misdemeanor to remove, for any purpose, without lawful authority, a corpse, from a grave in a burying-ground belonging to Dissenters. See also, in Chitty's Criminal Law, vol. 2, p. 35, an indictment "for digging up and carrying away a dead body out of a churchyard," and in the same vol. p. 36, an indictment against a master of a workhouse and a surgeon "for a conspiracy to prevent the body of a poor person, who had died in the workhouse, from being buried, in order that it might be dissected."

must be, respectively, deemed to include any number of persons, or any society, whether by charter or otherwise, and the meaning of the aforesaid words is not restricted, although the same may be subsequently referred to in the singular number and masculine gender only.<sup>1)</sup>

### I. *Licences to practise Anatomy.*

Licences to practise anatomy are granted by the principal Secretary of State for the Home Department, in Great Britain, and by the Chief Secretary for Ireland, in Ireland, to any fellow or member of any college of physicians or surgeons, or to any graduate or licentiate in medicine, or to any person lawfully qualified to practise medicine in any part of the United Kingdom, or to any professor or teacher of anatomy, medicine, or surgery, or to any student attending any school of anatomy, on application from such party, for such purpose, countersigned by two justices of the peace, acting for the county, city, borough, or place wherein such party resides, certifying that, to their knowledge or belief, such party, so applying, is about to carry on the practice of anatomy.<sup>2</sup>

### II. *Inspectors of Schools of Anatomy.*

1. Inspectors of places where anatomy is carried on are appointed by the said Secretary of State, or Chief Secretary, as the case may be. Every inspector continues in office for one year, or until he is removed by the said Secretary of State, or Chief Secretary, as the case may be, or until some other person is appointed in his place; and whenever an inspector dies, or is removed from his office, or refuses, or becomes unable to act, the said Secretary of State, or Chief Secretary, as the case may be, has the power to appoint another person to be inspector in his room. The said Secretary of State, or Chief Secretary, as the case may be, directs what district of town or country, or of both, and what places where anatomy is carried on, situate within such district, each inspector shall superintend, and in what manner he shall transact the duties of his office.<sup>3</sup>

2. It is the duty of every inspector to make a quarterly return to the said Secretary of State, or Chief Secretary, as the case may

<sup>1</sup> 2 & 3 Will. IV. c. 75, s. 19.

<sup>2</sup> *Ib.* s. 1.

<sup>3</sup> *Ib.* ss. 2 and 3.

be, of every deceased person's body that, during the preceding quarter, has been removed, for anatomical examination, to every separate place in his district where anatomy is carried on, distinguishing the sex, and, as far as is known at the time, the name and age of each person whose body was so removed, as aforesaid. Every inspector has authority to visit and inspect, at any time, any place within his district, notice of which place has been given, that it is intended there to practise anatomy.<sup>1</sup>

3. An annual salary, not exceeding £100, is paid to each inspector, and a reasonable allowance is made for the expenses of his office. Such salaries and allowances are paid quarterly, and an annual return thereof is made to Parliament.<sup>2</sup>

### III. *The Supply of Human Bodies.*

1. Any executor, or other party, having lawful possession of the body of any deceased person, and not being an undertaker, or other party entrusted with the body, for the purpose only of interment, may permit the body of such deceased person to undergo anatomical examination, unless, to the knowledge of such executor or other party, such person has expressed his desire, either in writing, at any time during his life, or verbally, in the presence of two or more witnesses, during the illness whereof he died, that his body, after death, might not undergo such examination, or unless the surviving husband, or wife, or any known relative of the deceased person requires the body to be interred, without such examination.<sup>3</sup>

2. If any person, either in writing, at any time during his life,

<sup>1</sup> 2 & 3 Will. IV. c. 75, ss. 4 and 5.

<sup>2</sup> *Ib.* s. 6.

<sup>3</sup> *Ib.* s. 7. It has been held (*R. v. Feist*, 8 Cox C. C. 18) that the master of a workhouse has lawful possession of the bodies of deceased paupers dying in the workhouse, and may sell them for dissection, unless the relatives specifically request that they may be interred without undergoing dissection; and where the master caused the appearance of a funeral to be gone through, to prevent the relatives from making such request, it was held that he could not be indicted for disposing of the dead bodies for gain and profit. The validity of this decision may, however, be considered doubtful, on the ground that the possession of the workhouse is in the guardians, and that the master is merely a servant. See Russell on Crimes, v. 1, p. 636. It has been held (*R. v. Cundick*, 1 D. and R., N. P. C. 13) an indictable offence, to sell for dissection the body of a convict, where dissection formed no part of the sentence. The bodies of murderers, which were formerly given for dissection, are now buried within the precincts of the prison in which they were executed. See 9 Geo. IV. c. 31, ss. 4 & 5; 2 & 3 Will. IV. c. 75, s. 16, repealed, 4 & 5 Will. IV. c. 26, s. 1, and 24 & 25 Vict. c. 95.



or verbally, in the presence of two or more witnesses, during the illness whereof he died, has directed that his body, after death, shall be examined anatomically, or has nominated any party duly authorised to examine bodies anatomically, to make such examination, and if, before the burial of the body of such person, such direction or nomination has been made known to the party having lawful possession of the dead body, it is the duty of such last-mentioned party to direct such examination to be made, and, in the case of any such examination as aforesaid, to request and permit any party, so authorised and nominated, to make such examination, unless the deceased person's surviving husband, or wife, or nearest known relative, or any one or more of such person's nearest known relatives, being of kin in the same degree, require the body to be interred, without such examination.<sup>1</sup>

#### IV. *The Removal and Interment of Bodies.*

1. In no case, may the body of any person be removed, for anatomical examination, from any place where such person may have died, until after forty-eight hours from the time of such person's decease.<sup>2</sup>

2. Nor until after twenty-four hours' notice (to be reckoned from the time of such decease) to the inspector of the district, of the intended removal of the body, or, if no such inspector have been appointed, to some physician, surgeon, or apothecary, resident at or near the place of death.<sup>3</sup>

3. Nor, unless a certificate, stating in what manner such person came by his death, shall, previously to the removal of the body, have been signed by the physician, surgeon, or apothecary who attended such person during the illness whereof he died, or, if no such medical man attended such person, during such illness, then, by some physician, surgeon, or apothecary, who must be called in, after the death of such person, to view the body, and who must state the manner or cause of death, according to the best of his knowledge and belief, but who must not be concerned in examining the body, after removal.<sup>4</sup>

4. In case of such removal, the above-mentioned certificate must be delivered, together with the body, to the party receiving the same for anatomical examination.<sup>5</sup>

5. Every such body, so removed for the purpose of examination,

<sup>1</sup> 2 & 3 Will. IV. c. 75, s. 8.

<sup>2</sup> *Ib.* s. 9.

<sup>3</sup> *Ib.*

<sup>4</sup> *Ib.*

<sup>5</sup> *Ib.*



must, before such removal, be placed in a decent coffin or shell, and be removed therein.<sup>1</sup>

6. The party so removing any such body, or causing the same to be so removed, must make provision that such body, after undergoing anatomical examination, be decently interred in consecrated ground, or in some public burial-ground in use for persons of that religious persuasion to which the person whose body was so removed, belonged.<sup>2</sup>

7. A certificate of the interment of such body must be transmitted to the inspector of the district, within six weeks after the day on which such body was received.<sup>3</sup>

#### V. *The Receipt and Possession of Bodies.*

1. Any member or fellow of any college of physicians or surgeons, or any graduate or licentiate in medicine, or any person lawfully qualified to practise medicine in any part of the United Kingdom, or any professor, teacher, or student, of anatomy, medicine, or surgery, having a licence to practise anatomy,<sup>4</sup> may receive or possess for anatomical examination, or examine anatomically, the body of any person deceased, if permitted or directed so to do by a party who had, at the time of giving such permission or direction, lawful possession of the body, and who had power to permit or cause the body to be so examined,<sup>5</sup> and provided that the necessary certificate<sup>6</sup> be delivered by such party, together with the body.<sup>7</sup>

2. Every person receiving a body for anatomical examination, after removal, must demand and receive, together with the body, the last-mentioned certificate.<sup>8</sup>

3. He must also, within twenty-four hours next after such removal, transmit to the inspector of the district such certificate, and also a return stating at what day and hour, and from whom the body was received, the date and place of death, the sex, and (as far as is known at the time) the Christian and surname, age, and last place of abode of such person, or, if no such inspector have been appointed, to some physician, surgeon, or apothecary residing at or near the place to which the body has been removed.<sup>9</sup>

<sup>1</sup> 2 & 3 Will. IV. c. 75, s. 13.

<sup>2</sup> *Ib.*

<sup>3</sup> *Ib.* "The Anatomy Act, 1871" (34 Vict. c. 16), authorizes one of the principal Secretaries of State, or the Chief Secretary for Ireland, as the case may be, to vary this period, by order, from time to time.

<sup>4</sup> See *ante*, p. 246.

<sup>5</sup> See *ante*, p. 247.

<sup>6</sup> See *ante*, p. 248.

<sup>7</sup> 2 & 3 Will. 4, c. 75, s. 10.

<sup>8</sup> *Ib.* s. 11.

<sup>9</sup> *Ib.*

4. He must also enter, or cause to be entered, all the last-mentioned particulars relating to the body, and a copy of the certificate he received therewith, in a book, to be kept by him for that purpose, and must produce such book, whenever required so to do by any inspector duly appointed.<sup>1</sup>

5. No party may carry on, or teach, anatomy at any place, or, at any place, receive or possess for anatomical examination, or examine anatomically any deceased person's body, after removal of the same, unless such party, or the owner or occupier of such place, or some party authorised to examine bodies anatomically, shall, at least one week before the first receipt or possession of the body, for such purpose, at such place, have given notice to the principal Secretary of State for the Home Department, or to the Chief Secretary for Ireland, as the case may be, of the place where it is intended to practise anatomy.<sup>2</sup>

6. No member or fellow of any college of physicians or surgeons, nor any graduate or licentiate in medicine, nor any person lawfully qualified to practise medicine in any part of the United Kingdom, nor any professor, teacher, or student, of anatomy, medicine, or surgery, having a licence to practise anatomy,<sup>3</sup> is liable to any prosecution, penalty, forfeiture, or punishment, for receiving or having in his possession, for anatomical examination, or for examining anatomically, any dead human body, according to the provisions prescribed by the statute.<sup>4</sup>

#### VI. *Post-mortem examinations.*

None of the above regulations or provisions extend to prohibit any post-mortem examination of any human body, required or directed to be made by any competent legal authority.<sup>5</sup>

#### VII. *Offences.*

1. Any person offending against any of the provisions above given, in England or Ireland, is guilty of a misdemeanor, and, being duly convicted thereof, may be punished by imprisonment for a term not exceeding three months, or by a fine not exceeding £50, at the discretion of the court before which he may be tried.<sup>6</sup>

2. Any person so offending, in Scotland, may, upon being duly convicted of such offence, be punished in like manner.<sup>7</sup>

<sup>1</sup> 2 & 3 Will. IV. c. 75, s. 11.

<sup>2</sup> *Ib.* s. 12.

<sup>3</sup> See *ante*, p. 246.

<sup>4</sup> 2 & 3 Will. 4, c. 75, s. 14.

<sup>5</sup> *Ib.* s. 15.

<sup>6</sup> *Ib.* s. 18. The suit must be commenced, however, within six months next after the cause of action accrued (s. 17).

<sup>7</sup> *Ib.*

## CHAPTER VII.

### DUTIES AND LIABILITIES OF MEDICAL MEN.

#### *Sec. I.—Negligence and Malapraxis.*

##### *I. Civil Liability.*

*Malapraxis*, in a medical man, is a great misdemeanor and offence at common law (whether it be by curiosity and experiment, or by neglect), because it breaks the trust which the party has placed in the physician, tending directly to his destruction,<sup>1</sup> and a medical man who is guilty of gross negligence, or evinces a gross want of knowledge of his profession, is criminally responsible for the consequences.<sup>2</sup>

But every medical practitioner who, by a culpable want of attention and care, or by the absence of a competent degree of skill and knowledge, causes injury to a patient, is liable to a civil action for damages, unless such injury be the immediate result of intervening negligence on the part of the patient himself, or unless such patient has, by his own carelessness, directly conducted to such injury.<sup>3</sup>

In *Slater v. Baker and Stapleton*,<sup>4</sup> the plaintiff employed the defendants, the first-named being a surgeon, and the second an apothecary, to cure his leg, which had been broken and set, and the callus of the fracture formed. The defendants disunited the callus, and Baker fixed on the plaintiff's leg a heavy steel instrument with teeth, to stretch or lengthen the leg. In a special action, upon the case, against the defendants, the plaintiff recovered £500 damages against them jointly, and, in answer to an objection that the action ought to have been trespass *vi et armis*, for breaking the plaintiff's leg, without his consent, the court replied,

<sup>1</sup> *Per Cur.*, in *Dr. Greonvelt's case*, 1 Lord Ray, 213.

<sup>2</sup> See, generally, "Criminal Responsibility," *post*.

<sup>3</sup> See Addison on Torts, Ed. 3, p. 17; 3 Blk. Com. 165; *Jones v. Fay*, 4 F. & F. 525; Bull. N. P. 72.

<sup>4</sup> 2 Wils. 359.



"It appears, from the evidence of the surgeons, that it was improper to disunite the callus, without consent. This is the usage and law of surgeons. Then, it was ignorance and unskilfulness, in that very particular, to do, contrary to the rule of the profession, what no surgeon ought to have done; and, indeed, it is reasonable that a patient should be told what is about to be done to him, that he may take courage and put himself in such a situation as to enable him to undergo the operation. For anything that appears to the court, this was the first experiment made with this new instrument; and if it was, it was a rash action, and he who acts rashly, acts ignorantly; and although the defendants, in general, may be as skilful in their respective professions as any two gentlemen in England, yet the court cannot help saying that, in this particular case, they acted ignorantly and unskilfully, contrary to the known rule and usage of surgeons."

In a later case,<sup>1</sup> where an action was brought against a surgeon, for negligently, ignorantly, and unskilfully reducing a dislocated elbow and fractured arm, of which he had undertaken the cure, the learned judge told the jury that the gist of the action was negligence, of which direct evidence might be given, or it might be inferred by the jury, if the defendant had proceeded without any regard to the common ordinary rules of his profession, but that unskilfulness, alone, without negligence, would not maintain the action, and that he was at a loss to state to the jury what degree of skill ought to be required of a village surgeon. On a motion for a rule to set aside the verdict, on the ground of misdirection, *Lord Ellenborough, C.J.*, differed from this ruling, and, after citing the last-mentioned case, gave it as his opinion that a surgeon would be liable for *crassa ignorantia*, and would be justly responsible in damages for having rashly adventured upon the exercise of a profession, without the ordinary qualification of skill, to the injury of a patient, and the other judges concurred.

The distinction between actionable and criminal negligence cannot be defined, except so far as to say, that to constitute the latter, there must be such a degree of complete negligence as the law means by the word, "felonious."<sup>2</sup> The only description that can be given is by means of illustrations, for which see the cases cited *post*, and also under the head of "Criminal Responsibility."

<sup>1</sup> *Seare v. Prentice*, 8 East, 348.

<sup>2</sup> See per Erle, C. J., in *R. v. Noakes*, 4 F. & F. 920.



A medical man is liable to a civil action for injury resulting to a patient from his negligence or unskilful treatment, although the patient neither employed, nor was to pay him. Thus, in *Longmeid v. Holliday*,<sup>1</sup> Parke, B., said, "If an apothecary administers improper medicines to his patient, or a surgeon unskilfully treats him, and thereby injures his health, he will be liable to the patient, even where the father or friend of the patient may have been the contracting party with the apothecary or surgeon; for, though no such contract had been made, the apothecary, if he gave improper medicines, or the surgeon, if he took him as a patient and unskilfully treated him, would be liable to an action for a misfeasance;" and in *Pippin v. Sheppard*,<sup>2</sup> which was an action by a man and his wife against a surgeon, for an injury to the wife, by reason of the defendant's improper and unskilful treatment, Richards, C. B., said, "From the necessity of the thing, the only person who can properly sustain an action for damages, for an injury done to the person of a patient, is the patient himself, for damages could not be given on that account to any other person, although the surgeon may have been retained and employed by him to undertake the cure;" and, in the same case, Garrow, B., said, "In the practice of surgery, the public are exposed to great risks, from the number of ignorant persons professing a knowledge of the art, without the least pretensions to the most necessary qualifications, and they often inflict very serious injury on those who are so unfortunate as to fall into their hands. In cases of the most brutal inattention and neglect, the patients would be precluded, frequently, from seeking damages by course of law, if it were necessary, to enable them to recover, that there should have been a previous retainer, on their part, of the person professing to be able to cure them. In all cases of surgeons retained by any of the public establishments, it would happen that the patient would be without redress, for it could hardly be expected that the governors of an infirmary should bring an action against the surgeon employed by them to attend the child of poor parents, who may have suffered from his negligence and inattention."

In *Gladwell v. Steggall*,<sup>3</sup> the plaintiff, an infant of ten years old, by her *prochein ami*, sued the defendant, who was a clergyman,

<sup>1</sup> 6 Exch. 767.

<sup>2</sup> 11 Price, 400.

<sup>3</sup> 5 Bing. N. C. 733; 8 Sc. 60; 8 L. J., N. S., C. P. 361.

and practised also as a medical man, for damages for a misfeasance. It was held that plaintiff's submitting to defendant's treatment was sufficient proof of an allegation of employment of the defendant by her, and that an averment that the defendant was employed by the plaintiff was immaterial, but that, were it material, the court would allow the declaration to be amended, by striking out such count.

The gist or ground of the proceedings in such actions is the actual maltreatment, whether through ignorance or negligence, and no distinction is made between those who are regular medical practitioners, and those who are not so, for if the latter profess to deal with the life and health of others, they are bound to have and to employ competent skill, whilst the former are bound to have and employ such knowledge and skill as are usual and reasonable, among medical men. Thus, in *Ruddock v. Lowe*,<sup>1</sup> the defendant, who kept a free anatomical museum in the Strand, was unqualified, but kept a qualified assistant, as the ostensible practitioner, and professed himself, in a pamphlet which he distributed, a master in the art of healing sexual disorders, adding that he never undertook a case, unless he could guarantee a perfect cure. The plaintiff, who was suffering from such a disorder, desired the advice of the defendant, who saw him frequently, treated him ignorantly and improperly, and administered an improper medicine (viz., mercury), whereby he was rendered worse instead of better, and excessive salivation was brought on. The question left by *Crompton, J.*, to the jury was, "Did the defendant treat the plaintiff with mercury, and so cause him injury, as stated?" A verdict for plaintiff, of £200, was returned. In *Jones v. Fay*,<sup>2</sup> which was an action against a chemist and druggist for malpractice, the plaintiff, who was suffering from painters' colic, applied to the defendant to give him something to relieve it, and the defendant treated him, on several occasions, with mercury, which brought on excessive salivation, rendering the plaintiff's system so weak, that an imprudent exposure brought on bronchitis, followed by dropsy. The defendant admitted that mercurial treatment was improper in the case, but stated that he administered rhubarb pills, and not blue pills at all. The plaintiff alleged, in the declaration, a retainer of the defendant, as "a surgeon and apothecary," and it was held that if the defendant assumed to act as a surgeon and apothecary,

<sup>1</sup> 4 F. and F. 519.

<sup>2</sup> 4 F. and F. 525.

he was liable as such, but that those words were immaterial, and might be rejected, the substance of the declaration being that he undertook to treat the plaintiff for his disorder, and did so negligently or ignorantly. *Pigott, B.*, in summing up to the jury, said, "The questions for you are, Did the defendant undertake to treat the plaintiff for his disorder? Did he do so, either with negligence or ignorance? Did this negligent or ignorant treatment cause injury to the plaintiff? These questions practically resolve themselves into this, whether the pills defendant gave the plaintiff were blue pills? For, if so, it is admitted that such treatment would be improper, and, whether given by accident or advisedly, the defendant would be equally liable. As regards damages, endeavour to distinguish between the injury caused by the defendant's negligence or ignorance, and that caused by the plaintiff's imprudence." Verdict for the plaintiff, damages £100.

The amount of care and skill required of a medical man, the absence of which will render him liable to an action, is well laid down in *Lauphier v. Phipos*.<sup>1</sup> In this case, the defendant, a surgeon, was called in to attend the plaintiff, for an injury to the hand and wrist, and the defendant, mistaking the nature of the injury, used such improper treatment for the case that the plaintiff lost the use of her hand. *Tindal, C. J.*, in summing up to the jury, said, "Every person who enters into a learned profession, undertakes to bring to the exercise of it a reasonable degree of care and skill. He does not undertake, if he is a surgeon, that he will perform a cure, nor does he undertake to use the highest possible degree of skill. There may be persons who have higher education and greater advantages than he has, but he undertakes to bring a fair, reasonable, and competent degree of skill, and the question is, whether the injury must be referred to the want of a proper degree of skill and care in the defendant, or not." Verdict for plaintiff, damages £100.

In *Rich v. Pierpont*,<sup>2</sup> which was an action against a surgeon and accoucheur, for injury caused to a female patient whom he had attended in childbirth, by reason of his neglect and want of proper care and skill, *Erle, C. J.*, in summing up to the jury, said that a medical man was certainly not answerable, merely because some other practitioner might possibly have shown greater

<sup>1</sup> 8 C. and P. 475.

<sup>2</sup> 3 F. and F. 35.



skill and knowledge; but he was bound to have that degree of skill, which could not be defined, but which, in the opinion of the jury, was a competent degree of skill and knowledge. What that was, the jury were to judge. It was not enough, to make the defendant liable, that some medical men of far greater experience or ability, might have used a greater degree of skill, nor that even he might possibly have used some greater degree of care. The question was, whether there had been a want of competent care and skill, to such an extent as to lead to the bad result. With reference to the medical evidence, which was greatly in favour of the defendant, his lordship remarked that, considering how much the treatment of a case depended upon its varying phases, which changed as quickly as the shifting hues of the heavens, it was hard for one medical man to come forward and condemn the treatment of a brother in the profession, and say he would have done this or that, when probably, had he been in a position to judge of the case from the first, he would have done no better." A verdict was given for the defendant.

In *Hanke v. Hooper*,<sup>1</sup> which was an action against a surgeon, for unskilful treatment, the plaintiff, a whitesmith, walked into the shop of the defendant, and asked to be bled, saying that he had found relief from it before, and was thereupon bled, by the defendant's apprentice, in the basilic vein, where there was an old cicatrix. The plaintiff's arm afterwards became considerably swollen and discolored, whereby he was rendered sick, and confined to the house for a month. *Tindal, C. J.*, in summing up, said, "A surgeon does not become an actual insurer; he is only bound to display sufficient skill and knowledge of his profession. If, from accident, or some variation in the frame of a particular individual, an injury happen, it is not a fault in the medical man. It does not appear that the plaintiff consulted the defendant as to the propriety of bleeding him; he took that upon himself, and only required the manual operation to be performed. The plaintiff must show that the injury was attributable to want of skill; you are not to infer it. If there were no indications in the plaintiff's appearance that bleeding would be improper, the defendant would not be liable for the bleeding not effecting the same result as at other times, because it might depend upon the constitution of the plaintiff. The question is, whether the plaintiff has proved

<sup>1</sup> 7 C. and P. 81. As to liability of surgeon for act of apprentice, see *post*, c. 8, s. 1.



that the injury resulted from the inexperience or want of previous knowledge, on the part of the defendant's young man." The verdict passed for the defendant.

In *Pimm v. Roper*,<sup>1</sup> the defendant, a surgeon, having been employed by a railway company to examine the plaintiff, one of their passengers, who had sustained an injury in a collision on their line, and he having, so far as he could see or judge, on the plaintiff's statement of his injuries, told him that they were so slight, that he accepted a small sum in compensation, it was held that there was no ground of action, even assuming that the plaintiff's injuries were greater.

In *Perionowsky v. Freeman and another*,<sup>2</sup> the plaintiff, who had been a patient at St. George's Hospital, sued two of the surgeons of that hospital, for maltreatment there, by causing him to be placed in a bath, so hot that he was scalded and injured. It was proved that the bath had been ordered by the defendants, but was actually administered by the nurses, that the defendants were not present at the administration, and that it was no part of their ordinary duty personally to superintend and direct such administration. *Cockburn, C. J.*, in summing up to the jury, said, that in our great hospitals it was indispensable that such matters as baths should be left to the nurses, and the question was, whether the defendants had been present when the man was put into the bath, or were near enough to observe what had occurred. The defendants would not be liable for the negligence of the nurses, unless near enough to be aware of it, and to prevent it. No doubt, persons who went as patients into hospitals were not to be treated with negligence, but, on the other hand, medical gentlemen, who gave their services gratuitously, were not to be made liable for negligence for which they were not personally responsible. The jury returned a verdict for the defendants.

In *Phillips v. Wood*,<sup>3</sup> damages were recovered against a chemist and druggist, who sold some blistering ointment to the plaintiff, to be applied to a mare with puffed legs, the ointment being so unfit for the purpose that such application resulted in an injury to her legs, which rendered her unfit for use; and in *George v. Skivington*,<sup>4</sup> it was held that the plaintiff had a good cause of action

<sup>1</sup> 2 F. and F. 783.

<sup>2</sup> 4 F. and F. 977.

<sup>3</sup> 1 Nev. and M. 434.

<sup>4</sup> 5 Law Rep. Exch. 1; 39 L. J. Ex. 8. See also *Black v. Elliot*, 1 F. and F. 595,

against the defendant, a chemist, for injury sustained by his (the plaintiff's) wife, by using hairwash, sold by the defendant to the plaintiff, for the use of plaintiff's wife, made up of ingredients known only to the defendant, and represented by him to be fit and proper to be used for washing the hair. A chemist, however, who sells to a customer a drug, without any knowledge of the purpose to which it is to be applied, which is fit for a grown person, is not liable if such drug is afterwards given, by the purchaser, to a child, and does injury.<sup>1</sup>

A medical practitioner who causes the death of a patient, by such negligence or *malapraxis* as would have entitled such patient (if death had not ensued) to maintain an action, and recover damages against him, in respect of the injury sustained thereby, is liable to an action for damages, notwithstanding the death of such patient, and although the circumstances under which the death was caused amount to felony.<sup>2</sup> Such action may be brought for the benefit of the wife, husband, parent, and child, of the deceased, and the jury may give such damages as they may think proportioned to the injury resulting from such death, to the parties, respectively, for whom, and for whose benefit such action is brought, but such injury must be a pecuniary loss, and the jury may not give damages as a *solatium*.<sup>3</sup> Not more than one action, however, will lie for and in respect of the same subject-matter of complaint, and every such action must be commenced within twelve calendar months after the death of such deceased person. Except as above, the right of action against a medical man, in respect of negligence or unskilfulness, is discharged by the death of the party entitled thereto, and does not pass to his executor or administrator.<sup>4</sup> In like manner, such right of action remains in a bankrupt, and does not pass to the assignees.<sup>5</sup>

In an action against a medical man, brought in a county court, it should be remembered that the plaint must, ordinarily, be entered at the court in the district of which the defendant

<sup>1</sup> S. C. per Pigott, B.

<sup>2</sup> 9 & 10 Vict. c. 93 (Lord Campbell's Act).

<sup>3</sup> *Duckworth v. Johnson*, 4 Hurls. and N. 653. It has lately been held (*The George and Richard*, W. N. 1871, p. 78), that a child *en ventre sa mère*, may, when born, be entitled to compensation, under this Act. This will apply where a medical man causes, by negligence, the death of a woman in her confinement.

<sup>4</sup> *Chamberlain v. Williamson*, 2 M. and S. 415.

<sup>5</sup> *Drake v. Beckham*, 11 M. and W. 319; *Beckham v. Drake*, 8 M. and W. 854.

carries on business, and that a medical man, having a fixed residence, but attending upon his patients at their houses in several parishes, carries on his business within the jurisdiction of the county court in which these parishes are situate.<sup>1</sup>

## *II. Criminal Liability.*

Where death is occasioned by negligence on the part of any one professing to deal with the health of others, whether he be a licensed practitioner or not, the offence may, under certain circumstances indicating a wanton and malicious disregard of human life, amount to murder.<sup>2</sup>

Of course, a medical practitioner who should, intentionally and with malice, cause the death of a patient, would be held guilty of this crime; but, in no case will an indictment for murder lie, unless there be a felonious destruction of life, with malice, either express or implied.

The law holds, however, that every person, whether licensed or unlicensed, who deals with the life or health of any of her Majesty's subjects, is bound to have and to use competent skill and sufficient attention, and that, if the patient die for want of either, the person is guilty of manslaughter.<sup>3</sup>

In these cases, a distinction seems to have been formerly drawn between regular and irregular physicians and surgeons,<sup>4</sup> but the law on this subject, as confirmed by all the recent decisions, is substantially the same with that laid down by Sir Matthew Hale, in his Pleas of the Crown, where he says,<sup>5</sup> "If a physician gives a person a potion, without any intent of doing him any bodily hurt, but with an intent to cure or prevent a disease, and, contrary to the expectation of the physician, it kills him, this is no homicide, and the like of a chirurgeon. And I hold their opinion to be erroneous that think if he be no licensed chirurgeon or physician that occasioneth this mischance, that then it is felony, for physick and

<sup>1</sup> *Mitchell v. Hender*, 18 Jur. 430. See also, generally, *Kannen v. M'Mullen*, 1 Peake, 83; *R. v. Butchell*, 3 Car. and P. 634; *Hupe v. Phelps*, 2 Stark, 480; *Hill v. Philp*, 7 Ex. 232; and, for a collection of American cases, *Shearman and Redfield on Negligence* (N. Y. 1869), c. 24, tit. "Physicians and Surgeons."

<sup>2</sup> See *Roscoe's Criminal Evidence*, 7th ed., p. 703.

<sup>3</sup> See per Bolland, B. in *Rex v. Spiller*, 5 Car. and P. 333. See also the remarks of Tindal, C. J., in *Edsall v. Russell*, 4 M. and G. 1099.

<sup>4</sup> 4 Bl. Com. c. 14; *Brit. trans.* by Nichols, i. 34; 4 Coke Inst. 251; 1 Cur. Hawk. 104; 1 East, P. C. 264.

<sup>5</sup> 1 Hale, P. C. 429.



salves were before licensed physicians and surgeons; and, therefore, if they be not licensed according to the statutes, they are subject to the penalties in the statutes, but God forbid that any mischance of this kind should make any person not licensed guilty of murder or manslaughter. And certainly, if that opinion should obtain, that if one not licensed a physician should be guilty of felony if his patient miscarry, we should have many of the poorer sort of people, especially remote from London, die, for want of help, lest their intended helpers might miscarry. This doctrine therefore, that if any dies under the hand of any unlicensed physician, it is felony, is apochryphal, and fitted, I fear, to gratify and flatter doctors and licentiates in physic, though it may, as I said, have its use, to make people cautious and wary how they take upon them too much, in this dangerous employment." Thus, in *R. v. Crick*,<sup>1</sup> the prisoner, an herb doctor, was charged with the manslaughter of a child, by administering over-doses of infusion of *lobelia inflata*, and was acquitted. *Pollock, C.B.*, in summing up to the jury, said, "It is no crime for anyone to administer medicine, but it is a crime to administer it so rashly and carelessly as to produce death, and in this respect, there is no difference between the most regular practitioner and the greatest quack. If the prisoner had been a medical man, I should have recommended you to take the most favourable view of his conduct, for it would be most fatal to the efficiency of the medical profession, if no one could administer medicine, without a halter round his neck; and although I cannot speak of a person in the prisoner's position in language as strong, still he ought not to be responsible, unless it has been proved, with reasonable certainty, that he caused the death by the careless administration of the drug."

In *R. v. Williamson*,<sup>2</sup> the prisoner, who was seventy-five years of age, and who had been in the habit of acting as man-midwife among the lower classes, was indicted for murder, and also charged with manslaughter, by the coroner's inquisition, for having caused the death of a patient, by tearing away part of a prolapsed uterus, supposing it to be part of the placenta. Fourteen women, who had been safely delivered by the prisoner, were called to testify to his usual attention and skill. *Lord Ellenborough*, in summing up, said that there was not a particle of evidence to convict the

<sup>1</sup> 1 F. and F. 519,

<sup>2</sup> 3 Car. & P. 635,



prisoner of murder, and that, to make out a case of manslaughter, the prisoner must have been guilty of criminal misconduct, arising either from the grossest ignorance, or the most criminal inattention, but that, in his opinion, to find the prisoner guilty of manslaughter would tend to encompass a most important and anxious profession with such dangers as would deter reflecting men from entering into it. A verdict of "not guilty" was returned.

In *R. v. Chamberlain*,<sup>1</sup> the prisoner, an herbalist, was indicted for the manslaughter of a woman, who had been suffering from a tumour, and to whom he administered an arsenical ointment, without giving her any caution or directions as to the use of it. The deceased, thinking the more she rubbed in the better, rubbed and rubbed, until she had absorbed so much of the poison that she died. *Blackburn, J.*, told the jury that if the prisoner by culpable negligence had caused the death of the deceased, he was guilty of manslaughter; but the mere fact that death had occurred through mistake or misfortune would not be enough, or no medical man would be safe. There must, however, be competent knowledge and care in dealing with a dangerous drug; and, if the man either was ignorant of the nature of the drug he used, or was guilty of gross want of care in its use, there would be criminal culpability. The real question in the case would be whether there was culpable negligence. It was a question for the jury, for it was a question of degree. It was a question of more or less, and it could not be defined. All the direction he could give them was that if the prisoner administered the arsenic without knowing or taking the pains to find out what its effect would be, or if, knowing this, he gave it to the patient to be used, without giving her adequate directions as to its use, there would, in either view of the case, be culpable negligence, and the prisoner ought to be convicted; but, if otherwise, there would not be such negligence, and the prisoner ought to be acquitted. It appeared to him that a medical man who should administer such a drug, or allow a patient to apply it, without taking care to observe its effects, or guard against them, would be gravely wanting in due care. Whether, under the circumstances, it amounted to culpable negligence was for the jury. A verdict of "not guilty" was returned.

Where, however, a blacksmith caused the death of a man

<sup>1</sup> 10 Cox, C. C., 486.

suffering from a cancer, by applying corrosive sublimate, he was convicted of manslaughter. *Watson, B.*, told the jury to find the prisoner guilty, if they thought he took upon himself the responsibility of attending to a patient suffering under cancer, without being qualified for the purpose. If he used dangerous applications, he was bound to bring skill in their use, and in this case the prisoner's education and employment made the use of these highly dangerous substances almost amount to a want of skill.<sup>1</sup>

So, in another case, where a blacksmith went, in a state of drunkenness, to deliver a woman, and was so ignorant of the proper steps that he totally neglected what was absolutely necessary after the birth of the child, whereby the woman died, he was convicted of manslaughter, and sentenced to imprisonment.<sup>2</sup> This is, probably, the case of *R. v. Ferguson*, reported in 1 Lewin C. C. 181, in which *Tindal, C.J.*, said to the jury: "You are to say whether, in the execution of that duty which the prisoner had undertaken to perform, he is proved to have shown such a gross want of care, or such a gross and culpable want of skill, as any person undertaking such a charge ought not to be guilty of; and whether the death of the person named in the indictment was caused thereby."

So, where a man who practised midwifery attended a woman in labour, and, being grossly ignorant of the art which he professed, and unable to deliver the woman, with safety to herself and the child, when the head of the child became visible, broke and compressed the skull of the infant, and thereby occasioned its death immediately after it was born, it was held that he could be rightly convicted of manslaughter.<sup>3</sup>

In *R. v. Nancy Simpson*,<sup>4</sup> the prisoner, an old woman, was convicted of manslaughter, for causing death by administering corrosive sublimate, as a medicine, to a sailor who had been discharged from an infirmary, as cured, after undergoing salivation, and who came to the prisoner for "an emetic to get the mercury out of his bones." *Bailey, J.*, said to the jury: "If a person not of medical education, in a case where professional aid might be obtained, undertakes to administer medicine which may have a dangerous effect, and thereby occasions death, such person is

<sup>1</sup> *R. v. Crook*, 1 F. & F. 521.

<sup>3</sup> *R. v. Senior*, 1 Moo. C. C. 346.

<sup>2</sup> Cited in *R. v. Long*, 4 C. & P. pp. 404-5.

<sup>4</sup> 1 Lewin, C. C., 172; 4 C. & P. 407 n.

guilty of manslaughter. He may have no evil intention, and may have a good one, but he has no right to hazard the consequence, in a case where medical assistance may be obtained. If he does so, it is at his peril. It is immaterial whether the person administering the medicine prepares it, or gets it from another."

In *R. v. Whitehead*,<sup>1</sup> the prisoner, who had been a butcher, but had practised for many years as a surgeon, without any legal qualification, was convicted of the manslaughter of a man on whom he had performed an operation for a disease in the bone. It was held, that on neither side could evidence be gone into of former cases treated by the prisoner, but that witnesses might be asked, *causâ scientiæ*, their opinion as to his skill. *Maule, J.*, in summing up to the jury, said, if a medical man, or any other man, caused the death of another intentionally, that would be murder; but where a person, not intending to kill a man, by his gross negligence, unskilfulness, and ignorance caused the death of another, then he was guilty of culpable homicide; and the question for the jury was, whether deceased had died from the effects of the operation performed on him by the prisoner, and whether the treatment pursued by the prisoner, in the case of the deceased, was marked by negligence, unskilfulness, and ignorance.

In *R. v. Spiller*,<sup>2</sup> the prisoner, a woman, was indicted for the manslaughter of a child who had been afflicted with scald-head, and brought by the mother, to the prisoner, to be cured, but was not convicted. The prisoner applied two plasters, successively, all over the child's head, and left with the mother materials for the manufacture of a third, which the mother accordingly made and applied. General sloughing of the scalp of the head ensued, and caused death. *Bolland, B.*, said: "If any person, whether he be a regular licensed medical man or not, professes to deal with the life or health of his Majesty's subjects, he is bound to have competent skill to perform the task that he holds himself out to perform, and he is bound to treat his patients with care, attention, and assiduity."

In *R. v. Webb*,<sup>3</sup> the prisoner was convicted of manslaughter, in causing the death of a patient suffering from small-pox, by administering large doses of Morrison's pills. *Lord Lyndhurst, C.B.*,

<sup>1</sup> 3 Car. & Kir. 202.

<sup>2</sup> 5 Car. & P. 333.

<sup>3</sup> 1 Moo. and R. 405.



said, "If, where proper medical assistance can be had, a person, totally ignorant of the science of medicine, takes upon himself to administer a violent and dangerous remedy to one labouring under disease, and death ensues in consequence of that dangerous remedy having been so administered, then he is guilty of manslaughter. I shall leave it to the jury to say, first, whether death was occasioned or accelerated by the medicines administered, and, if they think it was, then I shall tell them that the prisoner is guilty of manslaughter, if they think that, in so administering the medicines, he acted either with a criminal intention, or from very gross negligence."

In *R. v. Spilling*,<sup>1</sup> the prisoner, an apothecary and man-midwife, was convicted of manslaughter, for causing the death of a female patient, by the improper use of the *rectis*, or lever, during her pregnancy. *Coleridge, J.*, told the jury that no man was justified in making use of an instrument, in itself a dangerous one, unless he did so with a proper degree of skill and caution. If the jury thought that the prisoner had used the instrument with gross want of skill, or gross want of caution, and that the deceased had thereby lost her life, it would be their duty to find the prisoner guilty.

A medical man can only be held criminally responsible, where he evinces a *gross* want of skill, or has been guilty of *gross* negligence.

In *Rex v. Butchell*,<sup>2</sup> a surgeon was indicted for manslaughter, for causing the death of a patient, by perforating his rectum with a bougie, which he had passed for a disease of the rectum. *Hullock, B.*, in summing up, said, "I am really afraid to let the case go on, lest an idea should be entertained that a man's practice may be questioned whenever an operation fails. Assuming that the operation caused the death of the deceased, I am not aware of any law which says that this party can be found guilty of manslaughter. It makes no difference whether the party be a regular or irregular surgeon; indeed, in remote parts of the country, many persons would be left to die if irregular surgeons were not allowed to practise. There is no doubt that there may be cases where both regular and irregular surgeons might be liable to an indictment, as there might be cases where, from the manner of the operation, even malice might be inferred. If a person, *bonâ fide* and honestly exercising his best

<sup>1</sup> 2 Moo. and R. 107.

<sup>2</sup> 3 C. and P. 629.



skill to cure a patient, performs an operation which causes the patient's death, he is not guilty of manslaughter. It would be most dangerous for it to get abroad that if an operation, performed either by a licensed or an unlicensed surgeon, should fail, that surgeon would be liable to be prosecuted for manslaughter."

In *R. v. Long*,<sup>1</sup> the prisoner, in order to prevent consumption in a female patient, caused her back to be rubbed with a mixture prepared by himself, which brought on extensive inflammation, and a sloughing and mortified wound, which eventually caused death. He was allowed to call witnesses, to prove that the application of the same lotion to other patients had produced a beneficial effect, but was convicted. *Park, J.*, said, "What is called *malap Praxis* in a medical person is a misdemeanor, but that depends upon whether the practice he has used is so bad that everybody will see that it is *malap Praxis*. It is a question for the jury whether the experience the prisoner has acquired does not negative the supposition of any gross ignorance or criminal inattention. Skill may be acquired by practice. Proof that the prisoner did the act which shortened the patient's life does not prove the case, unless there was gross ignorance or inattention to human life to be inferred from it; and, if he had some information, it is not for the court or jury to say whether he drew improper conclusions from it; but if the result prove an erroneous opinion on his part, the question is whether this was an erroneous judgment of a person who was of general competency, though he, unfortunately, failed in the particular instance. On the one hand, we must be careful and most anxious to prevent people from tampering in physic, so as to trifle with the life of man, and, on the other hand, we must take care not to charge criminally a person who is of general skill, because he has been unfortunate in a particular case. It is God that gives, man only administers medicine, and the medicine that the most skilful may administer may not be productive of the expected effect; but it would be a dreadful thing if a man were to be called in question criminally, whenever he happened to miscarry in his practice."

This same *Long* was again indicted for manslaughter, in causing the death of a female patient, who came to him for a disease in the throat, by causing her chest to be rubbed with a liquid prepared by himself, whereby the chest became mortally inflamed,

<sup>1</sup> 4 C. and P. 398.

ulcerated, and gangrened, all over the same, and death ensued; but, on this occasion, the jury returned a verdict of "not guilty."<sup>1</sup> *Bayley, B.*, said to the jury, "The manner in which the act is done, and the use of due caution, seem to me to be material. If a man, either with gross ignorance or gross rashness, administer medicine, and death ensue, it will clearly be felony. In this case, we may judge of the thing by the effect produced, and that may be evidence from which the jury may say whether the thing which produced such an effect was not improperly applied. If I have the toothache, and a person undertakes to cure it by administering laudanum, and says, 'I have no notion how much will be sufficient,' but gives me a cupful, which immediately kills me; or, if a person prescribing James's powder says, 'I have no notion how much ought to be taken,' and yet gives me a tablespoonful, which has the same effect, such persons, acting with rashness, will be guilty of manslaughter. The willingness of the patient cannot take away the offence against the public. It matters not whether a man has received a medical education, or not; the thing to look at is, whether, in reference to the remedy he has used, and the conduct he has displayed, he has acted with a due degree of caution, or, on the contrary, has acted with gross and improper rashness and want of caution. If a man be guilty of gross negligence in attending to his patient, after he has applied a remedy, or of gross rashness in the application of it, and death ensues in consequence, he will be liable to a conviction for manslaughter."

The definition of what constitutes *gross* negligence, in the eyes of the law, is well laid down in the following case:—In *R. v. Markuss*,<sup>2</sup> the prisoner, an "herbalist," was indicted for the manslaughter of a female patient, by administering, as a remedy for a cold, an overdose of colchicum seeds and brandy, which caused gastritis and death. *Willes, J.*, said that "Gross negligence might be of two kinds: in one sense, where a man, for instance, went hunting, and neglected his patient, who died in consequence. Another sort of gross negligence consisted in rashness, where a person was not sufficiently skilled in dealing with dangerous medicines, which should be carefully used, of the properties of which he was ignorant, or how to administer a proper dose. A person who, with ignorant rashness, and without skill in his

<sup>1</sup> 4 C. & P. 423.

<sup>2</sup> 4 F. & F. 356.

profession, used such a dangerous medicine, acted with gross negligence. It was not, however, every slip that a man might make that rendered him liable to a criminal investigation. It must be a substantial thing. If a man knew that he was using medicines beyond his knowledge, and was meddling with things above his reach, that was culpable rashness. Negligence might consist in using medicines, in the use of which care was required, and of the properties of which the person using them was ignorant. A person who so took a leap in the dark, in the administration of medicines, was guilty of gross negligence. If a man were wounded, and another man applied to his wound sulphuric acid, or something which was of a dangerous nature, and ought not to be applied, and which led to fatal results, then the person who applied this remedy would be answerable, and not the person who inflicted the wound, because a new cause had supervened. But, if the person who dressed the wound, applied a proper remedy, then, if a fatal result ensued, he who inflicted the wound remained liable." The jury, after a long deliberation, returned a verdict of "not guilty."

In *R. v. Spencer*,<sup>1</sup> the prisoner, a duly qualified medical man, was indicted for the manslaughter of a patient, by administering a mixture which contained strychnia instead of bismuth, and was acquitted. It was held, by *Willes, J.*, that the jury, before they could convict, must be satisfied that the circumstances showed such gross and culpable negligence as would amount to a culpable wrong, and show an evil mind. That a blunder alone would not make the prisoner criminally responsible, nor the accident of some one else, and that the prosecution could not assume, but must prove, that the prisoner (who dispensed his own medicines) kept his ordinary drugs and his poisons in such a way that he could not tell which he was using. That the prisoner, being a competent man, and properly educated in his profession, this was not like the case of a quack, who had not skill to master what he had undertaken, or who, from any bad motive, committed the act with which he was charged.

In *R. v. Noakes*,<sup>2</sup> the prisoner, a chemist and druggist, was indicted for manslaughter. The deceased had for years been in the habit of sending constantly for aconite, and rarely for henbane,

<sup>1</sup> 10 Cox, C. C. 525.

<sup>2</sup> 4 F. & F. 920.



to the prisoner, who supplied poisons in bottles of a particular make and colour. On this occasion, the deceased, needing both aconite and henbane, sent two of his own bottles, of ordinary make, one of which bore the label, "Henbane, thirty drops at a time." The prisoner, by mistake, put the aconite into the henbane bottle, and the deceased took a dose of thirty drops, which proved fatal. *Erle, C. J.*, told the jury that they could not convict, unless there was such a degree of complete negligence as the law meant by the word "felonious," and that this case was not sufficiently strong to warrant their finding the prisoner guilty, on a charge of felony, but that there might be evidence of negligence, in a civil action. A verdict of "not guilty" was returned.

In *Tessymond's* case,<sup>1</sup> a chemist's apprentice was found guilty of manslaughter, for causing the death of an infant, by negligently delivering to a customer, who asked for paregoric to administer to such infant (which was nine weeks old), a bottle with a paregoric label, but containing laudanum, and recommending a dose of ten drops to be given. *Bayley, J.*, said, "If a party is guilty of negligence, and death results, the party guilty of that negligence is also guilty of manslaughter."

In *R. v. Ellis*,<sup>2</sup> the prisoner, a doctor of medicine, who kept a hydropathic establishment at Petersham, was charged, on a coroner's inquisition, with causing the death of a patient, who had been suffering from sciatica, by putting him in baths, and applying wet cloths to the lower part of his stomach, and thereby bringing on a mortal congestion of the lungs and heart. The prisoner was acquitted, but it was held that the offence was properly laid, although all that was done was by the consent of the deceased, and that the indictment need not charge an undertaking to perform a cure, and a felonious breach of duty.<sup>3</sup>

In *R. v. Bull*,<sup>4</sup> the prisoner, a medical man, was indicted for the manslaughter of his mother, by administering an overdose of prussic acid. It was held (*Cockburn, C. J.*) that culpable negligence must be proved, and the prisoner was found not guilty, the

<sup>1</sup> 1 Lewin, C. C. 169.

<sup>2</sup> 2 C. & K. 470.

<sup>3</sup> For a coroner's inquisition for manslaughter against a medical practitioner, and another, for causing the death of a female patient, by subjecting her to hydropathic treatment, see 2 Cox, C. C. App. 20.

<sup>4</sup> 2 F. & F. 201.



evidence being very confused as to the relative strengths of different preparations, the mode of measuring drops, the quantity likely to kill, and the state of the deceased's body when the drug was administered.

At a session of the Central Criminal Court, which sat on April 7th, 1862, a charge of manslaughter was brought against a surgeon, for causing the death of a woman, whom he had attended during childbirth, by negligence and unskilfulness, and the Recorder, in charging the grand jury, told them<sup>1</sup> that a medical man who undertook to perform a duty of this description was bound to bring to it a reasonable amount of skill and knowledge of his profession, and, if this was done, he would not be answerable for any fatal consequences that ensued; and it was only in case the grand jury should be satisfied that a medical man was guilty of gross negligence, or that he had exhibited gross ignorance of his profession, and that the death of the patient was the consequence of that ignorance, that they would be justified in finding a bill for manslaughter. Every medical man was, of course, liable to make a mistake, and he would not be criminally responsible for the consequences if it should appear that he had exercised reasonable skill and caution, and it was only in the case where a medical man was guilty of gross negligence, or evinced a gross want of knowledge of his profession, that he could be held criminally responsible.

### *Sec. II.—Inoculation with the Small-pox.*

Inoculating with the small-pox was made a criminal offence by 3 & 4 Vict. c. 29, s. 8;<sup>2</sup> and the Vaccination Act, 1867,<sup>3</sup> which repeals the above-mentioned Act, enacts that any person who, after the passing of the Act, "shall produce, or attempt to produce, in any person, by inoculation with variolous matter, or by wilful exposure to variolous matter, or to any matter, article, or thing impregnated with variolous matter, or wilfully, by any other means whatsoever, produce the disease of small-pox in any person, shall be guilty of an offence, and shall be liable to be proceeded

<sup>1</sup> Cited in *Rich v. Pierpont*, 3 F. & F. 41, n.

<sup>2</sup> A.D. 1840.

<sup>3</sup> 30 & 31 Vict. c. 84.

against, summarily, and, upon conviction, to be imprisoned for any term not exceeding one month."<sup>1</sup>

Before the passing of 3 & 4 Vict. c. 29, it seems not to have been an indictable offence to inoculate for the small-pox, provided that the manner in which the operation was performed was not incautious, and likely to affect the health of others, but it always was, and still is, unlawful, and an indictable offence, to expose persons infected with this, or any other contagious disorder, in the public streets, or in any place of general resort, to the danger of the public health.

In *R. v. Burnett*,<sup>2</sup> the defendant, an apothecary, was indicted for unlawfully and injuriously inoculating children with the small-pox, and, while they were sick of it, unlawfully and injuriously causing them to be carried along a public street,<sup>3</sup> and, on a motion in arrest of judgment, it was laid down by *Lord Ellenborough, C.J.*, that inoculation for the small-pox might be practised lawfully and innocently, yet that it must be under such guards as not to endanger the public health by communicating the disease; and, by *Le Blanc, J.*, that the introduction of vaccination did not render the practice of inoculation with the small-pox unlawful.

In *Rex v. Vantandillo*,<sup>4</sup> a mother was sentenced to imprisonment for carrying her child along a public highway, while it was infected with the small-pox, and *Le Blanc, J.*, in passing sentence, observed that there could be no doubt, in point of law, but that if anyone unlawfully, injuriously, and with full knowledge of the fact, exposed, in a public highway, a person infected with a contagious disorder, it was a common nuisance to all the subjects, and indictable, as such; that the court did not pronounce that every person who inoculated for the small-pox was guilty of an offence, provided it was done in a proper manner, and the patient was kept from the society of others, so as not to endanger a communication of the disease, but that no person having a disorder of this description upon him ought to be publicly exposed, to the endangering the health and lives of the rest of the subjects.

In *R. v. Sutton*,<sup>5</sup> which was an indictment for a nuisance in keeping a house (near Epsom) for inoculating for the small-pox,

<sup>1</sup> 30 & 31 Vict. c. 84, s. 32.

<sup>2</sup> 4 Maul. and S. 272.

<sup>3</sup> See form of indictment in Chitty's "Criminal Law," v. ii. p. 554.

<sup>4</sup> 4 Maul. and S. 73.

<sup>5</sup> 4 Burr. 2117.

the judges refused, on technical grounds, to quash the indictment, and expressed no opinion as to its validity. In an anonymous case,<sup>1</sup> the Lord Chancellor refused to grant an injunction to stay the building of a house to inoculate for the small-pox, in Coldbath Fields, on the ground that the fears of mankind, though reasonable ones, did not create a nuisance, and stated that, had it been a nuisance, the proper mode of proceeding would have been by information, in the name of the Attorney-General. He also mentioned, incidentally, during the case, that there had lately been an acquittal, upon an indictment of that kind, after a trial at Rye. In Chitty's "Criminal Law"<sup>2</sup> is a form of indictment against an apothecary "for keeping a common inoculating house, near the church, in a town," containing two counts, one for entertaining persons labouring under the distemper called the small-pox, whereby some of the parishioners caught it and died, and the other for inoculating persons, whereby the small-pox was communicated to the inhabitants.

The Sanitary Act, 1866,<sup>3</sup> imposes penalties on any person suffering from an infectious disorder, who wilfully exposes himself, and on any person in charge of one so suffering, who so exposes him, and on drivers of public conveyances who do not disinfect their vehicles, after conveying any such sufferer, and on those who let houses or lodgings where such sufferers may have been staying, without first obtaining a certificate from a medical man, to the effect that such houses or lodgings have been properly disinfected.

### *Sect. III.—Punishment of Abuses.*

#### *I. Unprofessional Conduct.*<sup>4</sup>

It is provided by the Medical Act, that "if any registered medical practitioner shall be convicted, in England or Ireland, of any felony or misdemeanor, or, in Scotland, of any crime or

<sup>1</sup> 3 Atkyn. 750.

<sup>2</sup> Vol. iii. p. 656.

<sup>3</sup> 29 & 30 Vict. c. 90, ss. 38, 39.

<sup>4</sup> See, generally, the remarks of Cockburn, C. J., in *Hunter v. Sharpe* (4 F. & F. 983), and see "Professional Etiquette," *post*, Appendix, sec. i. See also *Robinson v. Robinson and Lane* (29 L. J. P. and M. 178), a very remarkable case, and worthy of notice, as showing how liable medical men are to be made the subject of unfounded charges.

A suit was brought for dissolution of marriage, on the ground of the wife's adultery. The respondent, who had been staying in the house of the co-respondent,



offence, or shall, after due inquiry, be judged, by the General Council, to have been guilty of infamous conduct in any professional respect, the General Council may, if they see fit, direct the registrar to erase the name of such medical practitioner from the Register,"<sup>1</sup> and it has been held that the Medical Council are thereby constituted the sole judges of whether a medical practitioner has been guilty of infamous conduct in a professional respect, and that the court will not interfere where the Council have found anyone guilty, after due inquiry.<sup>2</sup>

This section of the Medical Act applies to conduct of which the practitioner has been guilty *before*, as well as after, registration.<sup>3</sup> It would seem that the General Council are bound to give the accused person an opportunity of being heard in his defence, but such person is not entitled to demand to be allowed to appear by counsel.<sup>4</sup> It is the custom of the General Council, to allow him to appear by attorney.

It is further provided by the Medical Act,<sup>5</sup> that, if any of the recognised colleges, or medical or surgical bodies, at any time

the proprietor of a hydropathic establishment, kept a diary, in which she chronicled, from time to time, with minute detail, acts of guilty familiarity with the co-respondent, in the grounds attached to the establishment. The court, however, being satisfied, after a long investigation, that the respondent was a woman of a too vivid imagination, and too ardent passions, and prone to exaggerate, over-colour, and distort facts, in all that related to her intercourse with men, dismissed the petition.

In all suits for divorce, where the respondent and co-respondent sustain the relation of patient and physician, respectively, the court will not infer carnal intercourse, except upon the strictest proof (*Dunham v. Dunham*, 5 Law Reporter, 139. Bishop on Marriage and Divorce, vol. 2, s. 631); and, indeed, in all cases where an attempt is made to prove criminal connection, by inference from acts of familiarity between the parties, the court will take into consideration, and make allowance for the relation existing between them.

So far has this principle been carried, that it was laid down by the old canonists, that if a clergyman were found embracing a woman in some secret place, this did not, as in the case of other people, prove adultery, for "he is not presumed to do it on the account of adultery, but rather on the score of giving his benediction, or exhorting her to penance."

To the credit of the profession, the cases are extremely rare in which medical men have appeared as co-respondents, in the divorce court. No language could, however, be too strong to denounce those who would betray the most sacred trust which one man can repose in another—the honour of those who are dear to him.

<sup>1</sup> S. 29.

<sup>2</sup> *Ex parte La Mert*. 4 B & S. 582; 33 L. J., Q. B. 69.

<sup>3</sup> *Reg. v. The General Council, &c.*, 30 L. J., Q. B. 201; 7 Jur., N. S., 798.

<sup>4</sup> S. C.

<sup>5</sup> S. 28.



exercise any power they possess, by law, of striking off from the list of such college or body the name of any one of their members, such college or body shall signify to the General Council the name of the member so struck off; and that the General Council may, if they see fit, direct the registrar to erase forthwith from the Register the qualification derived from such college or body, in respect of which such member was registered, and that the registrar shall note the same therein. The name of no person may, however, be erased from the Register, on the ground of his having adopted any theory of medicine or surgery.

Any application for the removal of a name from the Register is investigated, in the first instance, by the Branch Council of that part of the kingdom in which the person whose name is proposed to be removed resides, and a statement of the case, and of the evidence in support of it, is then sent up, by such Branch Council, to the registrar of the General Council. The registrar, if so directed, then summons the persons against whom the proceedings have been instituted to attend the General Council.<sup>1</sup>

When the Council remove the name of any person from the Register, they send due intimation thereof to the various recognised colleges, and medical and surgical bodies, accompanied by a recommendation that such person shall not be admitted to examination for any new qualification, without the consent of the General Council.<sup>2</sup>

A medical referee of a patient proposing an insurance on his life, who makes a wilfully untrue statement, or colludes with such patient, renders himself liable to an action at law, if loss should ensue,<sup>3</sup> but not if the statement be false, but not wilfully made.<sup>4</sup>

## II. *Criminal Abortion.*

In treating of the crime of feloniously procuring abortion, the perpetrators of which are, for the most part, to be found among the lowest class of quacks, druggists, and midwives, who criminally usurp the medical character, and thus succeed in causing a certain amount of the odium inseparable from such a crime to attach to qualified medical practitioners, the following remarks, by a member of the medical profession, are not out of place.

<sup>1</sup> Standing orders of General Council, c. 8, ss. 1—5.

<sup>2</sup> *Ib.* c. 8, ss. 9—11.

<sup>3</sup> *Pasley v. Freeman*, 3 T. R. 51.

<sup>4</sup> *Shrewsbury v. Blount*, 2 M. & G. 475.

"It has been often alleged," says Dr. Storer,<sup>1</sup> "and oftener supposed, that physicians in good standing not unfrequently, and without lawful justification, induce criminal abortion. This statement, whatever exceptional cases may exist, is wickedly false. The pledge against abortion, to the observance of which Hippocrates compelled his followers, by oath, has ever been considered binding, even more strongly of late centuries. The crime is recognised as such, in almost every code of medical ethics; its known commission has always been followed by ignominious expulsion from medical fellowships and fraternity. If this direct penalty be at any time escaped, it is only through lack of decisive proof; bare suspicion even of the crime insuring an actual sundering of all existing professional friendships and ties—a loss that subsequent proof of innocence could hardly restore. Such is the unanimous feeling of the profession. The instances where physicians in good standing are guilty of the crime are of rare occurrence; the error that has prevailed on this point originating from the self-assumed titles of notorious quacks and knaves. But no condemnation can be too strong for the physician who has thus forgotten his honour; who has used, to destroy life, that sacred knowledge by which he was pledged to preserve it."

At common law, the destruction of an infant in its mother's womb is neither murder nor manslaughter, such child not being *in rerum naturâ*;<sup>2</sup> but if a person, intending to procure abortion, causes a child to be born so soon that it cannot live, and it dies in consequence, it is murder.<sup>3</sup> It is also murder, if a person, attempting to procure abortion, either by means of drugs or instruments, cause the death of the woman.

Any person who, with intent to procure the miscarriage of any woman, whether she be or be not with child, unlawfully administers to her, or causes to be taken<sup>4</sup> by her, any poison, or other noxious thing, or unlawfully uses any instrument, or other means whatsoever, with the like intent, is guilty of felony, and, being convicted thereof, may, at the discretion of the court, be kept in penal servitude for life, or for any term not less than three years,

<sup>1</sup> Storer and Heard on Criminal Abortion (Boston, 1868), p. 102.

<sup>2</sup> See Russell on Crimes, vol. i., pp. 670, 740, 899.

<sup>3</sup> R. v. West, 2 C. & K. 784.

<sup>4</sup> See Reg. v. Wilson, D. & B., C. C. 127; Reg. v. Gaylor, *ib.* 288; Reg. v. Farrow, *ib.* 164; R. v. Fretwell, 31 L. J., M. C. 145.

or be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.<sup>1</sup>

Any person, also, who unlawfully supplies or procures any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed, with intent to procure the miscarriage of any woman, whether she be or be not with child, is guilty of a misdemeanor, and, being convicted thereof, may, at the discretion of the court, be kept in penal servitude for the term of three years, or be imprisoned for any term not exceeding two years, with or without hard labour.<sup>2</sup>

If the person who procures or supplies the substance intends that it should be used to procure miscarriage, it is sufficient to bring the case within the terms of the statute, as it is not necessary, to constitute the offence, that the woman herself should intend to use the drug, or that any other person should intend that it should be used for such a purpose.<sup>3</sup> The thing supplied must, however, be of a noxious character, and a conviction cannot be justified if it be harmless in itself, although, by being taken with the belief that it would bring about a miscarriage, it may, by acting on the imagination, have produced that effect.<sup>4</sup>

### III. *Assault on Patients.*

A medical practitioner, whether qualified or unqualified, who wilfully injures a patient, or person entrusted to his care, is liable to be indicted for an assault, and, if death ensue, as a consequence of the injury so inflicted, he may be indicted for murder. Thus, if a medical man were, from malice, under pretence of curing a patient, to rub him with an ointment that caused a serious sore, although the patient might have submitted at the time, supposing that the treatment was for his good, such medical man would be guilty of an assault.<sup>5</sup>

Where a surgeon, professing to take steps to cure a girl of an illness arising from suppressed menstruation, had carnal connection with her, she being ignorant of the nature of his act, and making

<sup>1</sup> 24 & 25 Vict. c. 100 s. 58. A similar liability attaches to any woman attempting to procure her own miscarriage in like manner.

<sup>2</sup> 24 & 25 Vict. c. 100 s. 59.

<sup>3</sup> *R. v. Hillman*, 33 L. J., M. C. 60.

<sup>4</sup> *R. v. Isaacs*, 32 L. J., M. C. 52.

<sup>5</sup> *Per Wilde, C. J.* ; *R. v. Case*, 19 L. J., M. C. 174.



no resistance, solely from a *bonâ fide* belief that he was, as he represented, treating her medically, with a view to her cure, it was held that his conduct, in point of law, amounted to an assault.<sup>1</sup> It was argued that the case did not negative that the medical man committed the act with the view of benefiting the girl in a medical point of view, but it was held<sup>2</sup> that the question was not material, for that it could not be justifiable or legal, in any point of view, for a surgeon to adopt such a mode of medical treatment to a girl ignorant of the character and consequences of his conduct.

In a case where a medical man, after applying an injection to a female patient from behind, was proceeding to have a criminal connection with her, but desisted the moment she resisted, it was held that this was only an attempt by surprise to get possession of her person, and was not an assault, with intent to commit a rape, but was an assault.<sup>3</sup>

In *Rosinski's case*,<sup>4</sup> the defendant pretended to be able to cure disorders of all kinds, and the prosecutrix applied to him to be cured of fits. The defendant told her she must strip naked, and, upon her refusal, told her that she must, or else he could not do her any good. She then began to untie her dress, and the defendant stripped off all her clothes. The jury found that the prisoner did not really believe that the stripping her could assist him in enabling him to cure her, and he was convicted of a common assault, which conviction was afterwards, upon a case reserved, held right.

Every person who takes upon himself the responsibility of imprisoning another, on the ground of insanity, must, in order to protect himself at common law, be able to show that the person so imprisoned was actually insane at the time;<sup>5</sup> and if a medical man, merely on statements made by the relations of a person supposed to be insane, send men to take him into custody and confine him, he will be guilty of an assault.<sup>6</sup> In such a case, if access cannot be had for the purpose of examination, application should be made to the Lord Chancellor to get the party taken up, in order that he may be examined.<sup>7</sup>

<sup>1</sup> *R. v. Case*, 19 L. J., M. C. 174.

<sup>2</sup> Per Wilde, C. J., *ib.* p. 176.

<sup>3</sup> *R. v. Stanton*, 1 Car. & Kir. 415.

<sup>4</sup> 1 Moo. C. C. 19; 1 Lewin, C. C. 11.

<sup>5</sup> Per Wightman, J., *Fletcher v. Fletcher*, 1 E. & E. 420.

<sup>6</sup> *Anderdon v. Burrows*, 4 C. & P. 210. See also *Eliot v. Allen*, 1 C. B. 18.

<sup>7</sup> *Anderdon v. Burrows*, *ut supra*, p. 214.



A medical man, or other person, may, however, justify such an assault, where it is committed for the purpose of putting a restraint upon a dangerous lunatic in such a state that it is likely he may do mischief to any one.<sup>1</sup> A medical man is not liable to a charge of assault, if he has merely signed a certificate under the Lunacy Acts, and has done nothing more towards causing the confinement of the alleged lunatic.<sup>2</sup>

*Sec. IV.—Duty of Medical Men as Witnesses.*

*I.—In the Coroner's Court.*<sup>3</sup>

*1. Who may be Summoned.*

1. Whenever, upon the summoning or holding of any coroner's inquest, it appears that the deceased person was attended at his death, or during his last illness, by any legally-qualified medical practitioner, the coroner may issue his order for the attendance of such practitioner as a witness.<sup>4</sup>

2. If it appear that the deceased person was not attended, at or before his death, by any legally-qualified medical practitioner, the coroner may issue his order for the attendance of any legally-qualified medical practitioner, in actual practice in or near the place where the death has happened.<sup>5</sup>

3. If it appear to the greater number of the jurymen sitting at such inquest, that the cause of death has not been satisfactorily explained by the medical practitioner, or other witnesses examined in the first instance, such greater number of jurymen may name to the coroner, in writing, any other legally-qualified medical practitioner or practitioners, and require the coroner to issue his order for the attendance of such medical practitioner or practitioners as a witness or witnesses, and the coroner is bound so to do.<sup>6</sup>

*2. Post-mortem examination.*

1. The coroner, either in his order for the attendance of the medical witness, or at any time between the issuing of such order

<sup>1</sup> *Scott v. Wakem*, 3 F. & F. 333; *Brookshaw v. Hopkins*, Lofft. 243. See also *Symm v. Fraser*, 3 F. & F. 859.

<sup>2</sup> *Hall v. Semple*, 3 F. & F. 337. See also *post*, tit. "Lunatics."

<sup>3</sup> See 6 & 7 Will. IV. c. 89, and 7 Will. IV. & 1 Vict. c. 68, s. 2.

<sup>4</sup> For form of order, see *post*, p. 279. <sup>5</sup> 6 & 7 Will. IV. c. 89, s. 1. <sup>6</sup> *Ib.* s. 2.

and the termination of the inquest, may direct the performance of a *post-mortem* examination, with or without an analysis of the contents of the stomach or intestines, by the medical witness or witnesses who may be summoned to attend at the inquest.<sup>1</sup>

2. The greater number of jurymen sitting at the inquest may require the coroner to issue his order for the performance of a *post-mortem* examination, with or without an analysis of the contents of the stomach or intestines, whether such an examination have been performed before or not, and the coroner is bound so to do.<sup>2</sup>

3. If any person state on oath before the coroner that, in his or her belief, the death of the deceased individual was caused partly or entirely by the improper or negligent treatment of any medical practitioner or other person, such medical practitioner or other person may not be allowed to perform or assist at the *post-mortem* examination of the deceased.<sup>3</sup>

4. Any authority empowered to execute the Nuisances Removal Acts may provide places, not being at a workhouse or mortuary-house, for the reception of dead bodies, during the time required for *post-mortem* examinations made under a coroner's order, and the coroner may order the removal of the body to such place, for the purpose of the examination.<sup>4</sup>

### 3. Fees.

1. Every legally-qualified medical practitioner who has attended upon a coroner's inquest, in obedience to the coroner's order, is entitled to the following fees, if the inquest be held in Great Britain:—

*a.* For attending to give evidence, where no *post-mortem* examination has been made by such practitioner—one guinea.

*b.* For making a *post-mortem* examination of the body of the deceased, either with or without an analysis of the contents of the stomach or intestines, and for attending to give evidence thereon—two guineas.<sup>5</sup>

2. No fee or remuneration can be claimed by any medical practitioner for the performance of any *post-mortem* examination instituted without the previous direction of the coroner.<sup>6</sup>

<sup>1</sup> 6 & 7 Will. IV. c. 89, s. 1.

<sup>2</sup> *Ib.* s. 2.

<sup>3</sup> *Ib.* s. 1.

<sup>4</sup> 29 & 30 Vict. c. 90, s. 28.

<sup>5</sup> 6 & 7 Will. IV. c. 89, s. 3 and Sch. (B.)

<sup>6</sup> *Ib.* s. 4.

3. When the inquest is holden on the body of any person who has died in any public hospital or infirmary, or in any building or place belonging thereto, or used for the reception of the patients thereof, or who has died in any county- or other lunatic asylum, or in any public infirmary, or other public medical institution, whether supported by endowments or by voluntary subscriptions, the medical officer whose duty it may have been to attend the deceased person, as a medical officer of such institution, can claim no fee or remuneration for attending such inquest as a witness, or for making a *post-mortem* examination of the deceased.<sup>1</sup>

4. It is the duty of the coroner, immediately after the termination of the proceedings at the inquest, to advance and pay the remuneration or fee due to any medical witness summoned under his order.<sup>2</sup>

#### 4. *Penalty for non-attendance.*

Where the coroner's order for the attendance of any medical practitioner at an inquest has been personally served upon such practitioner, or where any such order, not personally served, has been received by any medical practitioner, in sufficient time for him to have obeyed such order, or where any such order has been served at the residence of any medical practitioner; and, in every case, where any medical practitioner has not obeyed such order, he is liable to a penalty of £5 for such neglect or disobedience, upon complaint thereof made by the coroner, or any two of the jury, before any two justices having jurisdiction in the parish or place where the inquest under which the order issued was held, or in the parish where such medical practitioner resides, and such penalty will be enforced by distress and sale of his goods, unless he can show to the said justices a good and sufficient cause for not having obeyed such order.<sup>3</sup>

#### 5. *Form of Summons by Coroner.*

The coroner is compelled, by statute, to issue his summons for the attendance of a medical witness at an inquest, according to the following form, and any other description of order would be invalid:<sup>4</sup>—

“Coroner's Inquest at                      upon the body of                      .  
“By virtue of this my order, as coroner for                      , you

<sup>1</sup> 6 & 7 Will. IV. c. 89, s. 5.

<sup>2</sup> 7 Will. IV. & 1 Vict. c. 68, s. 2.

<sup>3</sup> 6 & 7 Will. IV. c. 89, s. 6.

<sup>4</sup> *Ib.* s. 1, and Sch. (A.)



are required to appear before me and the jury at  
 on the            day of            , one thousand eight hundred  
 and            , at            of the clock, to give evidence touching  
 the cause of death of            [and make, or assist in  
 making, a *post-mortem* examination of the body with (without)  
 an analysis], and report thereon at the said inquest.

“(Signed)

A. B., Coroner.

“To

, Surgeon [or M.D.]”

## II. *As Skilled Witnesses, and Generally.*

The opinion of witnesses possessing peculiar skill is admissible in courts of justice, whenever the subject matter of inquiry is such that inexperienced persons are unlikely to prove capable of forming a correct judgment upon it without such assistance; in other words, when it so far partakes of the nature of a science as to require a course of previous habit or study, in order to the attainment of a knowledge of it.<sup>1</sup> Thus, the opinions of medical men are constantly admitted as to the cause of disease or of death, or the consequences of wounds, and as to the sane or insane state of a person's mind, as collected from a number of circumstances, and as to other subjects of professional skill.<sup>2</sup> Nothing more is required to entitle anyone to give evidence as a medical witness than that he has been educated in his profession, nor is it necessary that he should be engaged in the practice of such profession.<sup>3</sup> The tribunal must determine the weight due to such testimony, in each particular instance, and it is a question of fact, to be decided by the court at the trial, whether a witness offered as an expert has the necessary qualifications.<sup>4</sup>

It must be remembered, however, that medical men, when called as skilled witnesses, may only say what, in their judgment, would be the result of certain facts submitted to their consideration, and may not give an opinion as to the general merits of the case, or on things with which a jury may be supposed to be equally well acquainted.<sup>5</sup> Thus, the opinion of a medical witness was not admitted where the question was, whether a physician, in

<sup>1</sup> 1 Smith's "Lead. Cas.," 6th ed. 509. "Best on Evidence," 5th ed. 649.

<sup>2</sup> Greenleaf Ev. 12th. ed. v. i. p. 483. See also *post* tit. "Medical Jurisprudence."

<sup>3</sup> See Tullis v. Kidd, and Jones v. Tucker, cited in Greenleaf, *ut supra*.

<sup>4</sup> *Ib.*

<sup>5</sup> Ramadge v. Ryan (per Tindal, C. J.), 9 Bing. 335; 2 L. J., N. S., C. P. 8. See also Jameson v. Drinkald (per Parke, J., and Gaslee, J.), 12 Moore, 157.



refusing to consult with the plaintiff, had honourably and faithfully discharged his duty to the medical profession,<sup>1</sup> nor was such opinion admitted as to whether the act for which a prisoner was being tried was, taking into consideration the other testimony given, an act of insanity, but the witness was allowed to be asked whether such and such appearances, proved by other witnesses, were, in his judgment, symptoms of insanity.<sup>2</sup>

Where an accused person is supposed to be insane, a medical man, conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial, and the examination of all the witnesses, may be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious, at the time of doing the act, that he was acting contrary to law, or whether he was labouring under any and what delusion at the time, where the facts are admitted, or not disputed, and the question becomes one of science only.<sup>3</sup> On an indictment for manslaughter, by the negligence and ignorance of a medical practitioner, medical witnesses may be called to give their opinion, *causâ scientiæ*, as to the skill of the accused.<sup>4</sup> On a plea of insanity at the time of making a contract, the opinion of the medical men who gave certificates, on which the defendant was confined as insane, at or about the time, is only evidence for the jury, who must judge of the grounds on which it was formed.<sup>5</sup> In an action against an accoucheur, for injury sustained by his want of skill, an eminent member of the medical profession, who had been in court, and heard all the evidence, was asked whether he was of opinion that there had been any want of due care or skill on the part of the defendant; the question in that form was objected to, and the witness was then asked, with the sanction of the court, whether he had heard anything which was improper in the defendant's treatment of the patient, in a medical point of view.<sup>6</sup>

Medical books may not be put in evidence, although the medical witnesses state that such books are works of medical

<sup>1</sup> *Ramadge v. Ryan, ut ante.*

<sup>2</sup> *R. v. Wright, Russ, and Ry. 456.* See also *R. v. Searle*, 1 Moo. and Rob. 75.

<sup>3</sup> *M'Naghten's Case*, 10 Clark and Fin. 200.

<sup>4</sup> *R. v. Whitehead*, 3 Car. and Kir. 202.

<sup>5</sup> *Lovatt v. Tribe*, 3 F. & F. 9.

<sup>6</sup> *Rich v. Pierpont*, 3 F. & F. 36.

authority, but the medical witnesses may be asked their judgment and the grounds of it, which may, in some degree, be founded on these books, as a part of their general knowledge.<sup>1</sup> A counsel, in his address to the jury, has no right to quote the opinions of medical men, as given in their works.<sup>2</sup>

It was decided, nearly a hundred years ago,<sup>3</sup> that a medical man has no privilege to avoid giving in evidence any statement made to him by a patient, but that he is bound to disclose, when called upon so to do, every communication, however private and confidential, which has been made to him while attending in his professional character.<sup>4</sup> Representations made by a sick person, of the nature and effects of the malady under which he is labouring, are receivable as original evidence, whether they be made to the medical attendant, or to any other person, though the former are, naturally, entitled to greater weight than the latter, inasmuch as a physician is far more capable than a man unacquainted with the symptoms of diseases of forming a correct judgment respecting the accuracy of the statements;<sup>5</sup> but statements, in writing, by patients to a medical man, describing the symptoms of the illness upon which the medical man has advised the patient, are not admissible in evidence.<sup>6</sup>

A confidential report to an insurance company, by its medical officer, as to the state of health of a party whose life is proposed to be insured, is not of such a confidential character as to entitle it to the privilege of protection,<sup>7</sup> nor is the report made by the medical officer of a railway company as to the injuries sustained by a passenger in an accident on their line,<sup>8</sup> unless such report have been obtained by the company with a view to impending litigation.<sup>9</sup>

Medical men are frequently called upon to give evidence with regard to dying declarations. It should be remembered that such

<sup>1</sup> *Collier v. Simpson*, 5 C. & P. 73.

<sup>2</sup> *R. v. Crouch*, 1 Cox, C. C. 94.

<sup>3</sup> *Duchess of Kingston's Case*, 20 Howell St. Tr. 573.

<sup>4</sup> See also *Wilson v. Rastall*, 4 T. R. 760, per Buller, J.; *Greenough v. Gaskell*, 1 Myl. and K. 103, per Ld. Brougham; *R. v. Gibbons*, 1 C. & P. 97; *Broad v. Pitt*, 3 C. & P. 519, per Best, C. J.; *Greenleaf on Evidence*, vol. i. p. 281, as to the American law on this subject; and *post*, "Professional Etiquette."

<sup>5</sup> *Aveson v. Lord Kinnaird*, 6 East 188; *Taylor on Evidence*, pt. 2, c. 7, s. 518.

<sup>6</sup> *Witt v. Witt*, 3 Sw. & Trist, 143.

<sup>7</sup> *Lee v. Hammerton*, 10 L. T., N. S. 730.

<sup>8</sup> *Baker v. London and South Western Ry. Co.*, Law Rep. 3 Q. B. 91.

<sup>9</sup> *Cossey v. London, Brighton, &c., Ry. Co.*, Law Rep. 5 C. P. 146.

a declaration is not admissible in evidence, unless the deceased was conscious of approaching death, and made it under a sense of impending death. Any hope of recovery, however slight, renders such a declaration inadmissible, and the question turns rather on the state of mind at the time of making the declaration, than upon the interval between it and the death. The declaration is only admissible in a charge of homicide, and where the death of the deceased is the subject of the charge, and the circumstances of the death the subject of the declaration.<sup>1</sup>

Thus, where, in a trial for murder by administering poison, a surgeon, who was called as a witness, said: "I had told the deceased she would not recover, and she was perfectly aware of her danger. I told her I understood she had taken something; she said that she had, and that damned man had poisoned her. I asked her what man, and she said C. (the prisoner). She said she hoped I would do what I could for her, for the sake of her family. I told her there was no chance of her recovery," it was held that this showed such a degree of hope, in the mind of the deceased, as rendered the declaration inadmissible, and the whole of the evidence was rejected.<sup>2</sup>

Where a medical man, called in to attend a patient suffering from some injury or disorder, suspects that such injury or disorder has been caused by some third person, and, by holding out a promise or threat, succeeds in obtaining from such person a confession of guilt, such confession will not be received in evidence, in a criminal prosecution. Thus, where a girl was charged with administering poison with intent to murder, and it appeared that the surgeon who was called in, said to her, "You are under suspicion of this, and you had better tell all you know," it was held that a statement made to him by the girl, under these circumstances, was not admissible in evidence.<sup>3</sup>

A medical man may be called upon to assist a jury of matrons impannelled to try whether a prisoner is quick with child; but if

<sup>1</sup> See Russell on Crimes, 4th ed., vol. iii. p. 250.

<sup>2</sup> R. v. Crockett, 4 C. & P. 544.

<sup>3</sup> R. v. Kingston, 4 C. & P. 387. See also R. v. Garner, (1 Den. C. C. 329; 2 C. and K. 920), where, in a similar case, the medical man said: "It will be better for you to tell the truth," and the confession was not received in evidence. In this case, however, the inducement was held out in the presence of the prisoner's master. The general rule is, that, to exclude evidence of such a confession, the inducement must have been held out by, or in the presence of, some one *having authority*.



they require the evidence of a surgeon, before they give their verdict, they must return into court, and the surgeon must, after he has examined the prisoner, be sworn, and examined as a witness, in open court.<sup>1</sup>

An entry made by a medical man, in the course of his profession, is admissible in evidence, after his decease, especially if such evidence be against his own interests. Thus, an entry made by a deceased man-midwife, that he had delivered a woman of a child, on a particular day, and referring to his ledger, in which the charge for his attendance was marked *paid*, was admitted as evidence, on the trial of an issue as to the age of the child.<sup>2</sup>

By the Scotch law, a medical man may read to the jury, as part of his evidence, a report of any medical facts or appearances made by him at the time, confirming it, at its close, by a declaration, on his oath, that it is a true report.<sup>3</sup> As a matter of practice, a medical man will find it extremely convenient, in any case with regard to which he may be likely to be called upon to give evidence in the future, to draw up a report or memorandum of facts and appearances, at the time while they are fresh in his recollection, for such facts and appearances are generally so minute and detailed that they cannot with safety be entrusted to the memory; and although the witness may not be allowed to read such a report, as part of his evidence, yet he will always be at liberty to refer to it, even in the witness-box, for the purpose of refreshing and assisting his memory.<sup>4</sup>

<sup>1</sup> *R. v. Wycherley*, 8 Car. & P. 262.

<sup>2</sup> *Higham v. Ridgway*, 10 East, 109; 2 Smith, L. C. ed. 6, 287.

<sup>3</sup> *Alison's Crim. Law of Scot.* p. 541.

<sup>4</sup> For hints on medico-legal observation, and the rules which should guide, and the demeanour which should be observed by medical witnesses in delivering their evidence, medical readers are referred to the opening chapter of Taylor's "Medical Jurisprudence" (8th ed. 1865), a work written by a member of their own profession. The following valuable suggestions, extracted therefrom, and more fully treated therein, are especially worthy to be remembered:—

"1. The first duty of a medical jurist is to cultivate a faculty of minute observation of medical and moral circumstances."

"2. A medical man when he sees a dead body should notice everything."

"3. Medico-legal reports should not be drawn up in exaggerated language, or overloaded with technical terms. Nothing should be entered in a report which is not connected with the subject of inquiry, and which has not actually fallen under the observation of the reporter. The introduction of hearsay statements should be carefully avoided."

"4. No man is compellable to give an opinion upon insufficient data, and if, by



### III. Fees.

#### 1. In the Superior Courts.

<i>Per diem.</i>	If resident in the town in	£	s.	£	s.
	which the cause is tried . . . .			1	1
<i>Per diem.</i>	If resident at a distance from				
	the place of trial, inclusive of all except				
	travelling expenses (if the witness				
	attend in more than one cause, he is				
	entitled to a proportionate part in each				
	cause, only) . . . . .	2	2 to 3	3	3

the institution of a judicial inquiry, there are grounds for believing that a death has not been natural, no medical opinion of the cause should be given, in the absence of an inspection. Such an opinion must always be conjectural, and involve the medical man in an unpleasant responsibility."

"5. A medical witness should bear in mind two points. (I.) That he should be well prepared on all parts of the subject on which he is about to give evidence: (II.) That his demeanour should be that of an educated man, and suited to the serious occasion on which he appears, even though he may feel himself provoked or irritated by the course of examination adopted."

"6. In reference to *facts*, a medical witness must bear in mind that he should not allow his testimony to be influenced by the consequences which may follow from his statement of them, or their probable effect on any case which is under trial. In reference to *opinions*, their possible influence on the fate of a prisoner should inspire caution in forming them; but, when once formed, they should be honestly and candidly stated, without reference to consequences."

"7. The questions put on either side should receive *direct* answers from the medical witness, and his manner should not be perceptibly different, whether he is replying to a question put by the counsel for the prosecution, or for the defence."

"8. The replies should be concise, distinct, and audible, and, except where explanation may be necessary, they should be confined strictly to the terms of the question."

"9. Answers to questions should be neither ambiguous, undecided, nor evasive."

"10. The replies should be made in simple language, free from technicality."

"11. A medical witness may, without any imputation upon his *bona fides*, explain medical points to counsel, and correct him on medical subjects, when wrong in his views or statements, but he should avoid even the appearance of prompting counsel in the conduct of the case."

"12. It will frequently be the duty of a medical expert, in civil as well as in criminal cases, and in all actions for *malap Praxis*, to pass an opinion on the practice of another professional man. On such occasions, while there should be no suppression of the truth, a witness is bound, in answering questions put to him by counsel, to state his opinion, and the grounds upon which it is based, clearly and distinctly. A medical witness is not bound to be forward in pointing out and suggesting defects, or in endeavouring to lower another practitioner in the opinion of the public; but nothing should be concealed which is relevant to the elucidation of the case in issue."

For travelling expenses, the amount reasonably and actually paid is allowed, provided that it does not exceed 1s. per mile, one way.

2. *In the Probate Court.*

*Per diem.* If resident within five miles of the £ s.

General Post Office .. .. . 1 1

*Per diem.* If resident beyond that distance .. 3 3

Including board and lodging.

For travelling expenses, the same allowance as in the superior courts.

3. *In the Divorce Court.*

*Per diem.* If resident within five miles £ s. £ s.

of the General Post Office .. .. . 1 1

*Per diem.* If resident beyond that distance .. .. . 2 2 to 3 3

Including board and lodging.

For travelling expenses, the same allowance as in the superior courts.

4. *In the House of Lords.*

	Time.	<i>Per diem.</i> Hotel expenses, if from home.
Apothecaries, and Chemists and	£ s.	£ s.
Druggists .. .. .	1 1	1 1
Physicians and Surgeons .. .. .	2 2	1 1

Higher charges are, under special circumstances, sometimes allowed.

Sundays do not count as time.

For travelling expenses, the sum necessarily expended is allowed.

5. *In the County Court.* £ s. £ s.

*Per diem* .. .. . 0 10 to 1 0

For travelling expenses, the sum reasonably paid, but not more than 6d. per mile, one way.

6. *In the Admiralty Court.*

*Per diem.* Whether required to come a £ s. £ s.

distance not exceeding five miles, or no 1 1 to 3 3

Including board and lodging.

For travelling expenses, the same allowance as in the superior courts.

7. *In the Bankruptcy Court.*

*Per diem.* If resident in the town in £ s. £ s.  
 which the court is held .. .. 1 1

*Per diem.* If resident at a distance  
 from the court, including subsistence 1 1 to 3 3

Travelling expenses are allowed at the rate of 7d. per mile, one way, where no railway is available; or travelling expenses actually incurred, in the discretion of the taxing officer.

8. *In the Mayor's Court, London.* s. d. £ s.

*Per diem* .. .. 10 6 to 1 1

Travelling expenses, the same allowance as in the superior courts.

9. *In the Court of Passage, Liverpool.*

*Per diem.* If residing in or near the £ s. £ s.  
 borough .. .. 1 1

*Per diem.* If from a distance, inclusive  
 of all travelling expenses .. .. 2 2 to 3 3

10. *In Criminal Cases.*

The expenses of witnesses in most cases of misdemeanor, and all cases of felony, are now allowed.<sup>1</sup>

On an examination before a magistrate or magistrates, there may be allowed to prosecutors or witnesses, being members of the medical profession, if resident in the city, borough, parish, town, or place where the examination is taken, or within a distance not exceeding two miles from such place, for their loss of time and trouble, in attending to give professional evidence on such examination, but not otherwise, a sum, in the discretion of the magistrate or magistrates, for each attendance, not to exceed 10s. 6d.

If such prosecutor or witness reside elsewhere, then a sum, for the same, not to exceed £1 1s.

For mileage, a sum not to exceed 3d. per mile, each way.

To prosecutors and witnesses, being members of the medical profession, attending courts of assize, general sessions of the peace, &c., to give professional evidence, but not otherwise, for their trouble, expenses, and loss of time, there may be allowed, for each

<sup>1</sup> See, generally, Taylor on "Evidence," p. 1079, &c.; 7 Geo. IV. c. 64; 29 & 30 Vict. c. 52; and 30 & 31 Vict. c. 35.

day they necessarily attend the court, to give professional evidence, a sum not to exceed £1 1s.

For each night they may be necessarily detained from home, 2s., and, for mileage, a sum not to exceed 3d. per mile, each way.

### 11. *In Equity.*

The same allowance for expenses, including compensation for loss of time, and also for travelling expenses, as in the superior courts of common law.<sup>1</sup>

### 12. *Remarks.*

A medical man is entitled to his expenses according to the above scales (except in criminal cases), although he be not called to give professional evidence,<sup>2</sup> and it is not necessary to prove that he is in practice.<sup>3</sup>

His reasonable expenses should be tendered to him at the time when he is served with the subpoena, in civil cases, or at least a reasonable time before the trial, and, even though he actually appear, he cannot be attached for declining to give evidence, unless these charges be paid or tendered,<sup>4</sup> but the objection that his expenses have not been paid must be raised *before he has been sworn*.<sup>5</sup>

In criminal cases, no tender of fees is necessary, except in the case of witnesses living in one distinct part of the United Kingdom being required to attend subpoenas directing their attendance in another, who are not liable to punishment for disobedience of the process, unless, at the time of service, a reasonable and sufficient sum of money to defray their expenses in coming, attending, and returning have been tendered to them.<sup>6</sup>

A subpoena should be served a reasonable time before trial, to enable a witness to put his affairs in such order that his attendance on the court may be as little detrimental as possible to his interests.<sup>7</sup>

<sup>1</sup> *Nokes v. Gibbon*, 26 L. J., Cha. 208.

<sup>2</sup> *Parkinson v. Atkinson*, 31 L. J., C. P. 199.

<sup>3</sup> *Turner v. Turner*, 5 Jur., N. S. 839.

<sup>4</sup> See *Clark v. Gill*, 1 Kay & J. 19; *Brocas v. Lloyd*, 23 Beav. 129.

<sup>5</sup> See *Webb v. Page*, 1 Car. & Kir. 23.

<sup>6</sup> 45 Geo. III. c. 92, s. 4.

<sup>7</sup> *Hammond v. Stewart*, 1 Stra. 510.



#### IV. *Medical Jurisprudence.*

Medical Jurisprudence, which must be here understood according to the definition given by Paris and Fonblanque, viz., as “a science by which medicine and its collateral branches are made subservient to the construction, elucidation, and administration of the laws, and to the preservation of the public health,” is evidently a subject of too large a scope for the limits of the present work, and requires, moreover, that the writer should be thoroughly conversant with the whole range of medicine and surgery.

This science, the importance of which, especially to medical men, when called upon to act as witnesses, can hardly be over-estimated, has, however, been so exhaustively treated, in all its various branches and details, by members both of the medical and legal professions, that any remarks thereon in these pages would be entirely superfluous. In the Appendix<sup>1</sup> will be found an alphabetical list of the principal authorities, and to them the reader is referred for information on the subject.

#### *Sec. V.—Registration of Births and Deaths.*

Medical men who have been present at the birth of any child, or in attendance during the last illness of any person dying in *England*, are not compelled to give notice of such birth or death to the registrar, as it is the duty of the registrar to inform himself carefully of every birth and every death which may happen within his district;<sup>2</sup> but any person, whether a medical man or not, who was present at the death, or in attendance during the last illness of any person dying in *England*, must, if requested by the registrar, within eight days next after the day of such death, give information, according to the best of his knowledge and belief, as to the name and surname, sex, age, and rank or profession of the deceased person, and also as to the date and cause of death,<sup>3</sup> and if he refuse to give such information, he will be liable to be indicted for a misdemeanor.<sup>4</sup> He must also, after supplying the registrar with the required information, sign his name, description, and place of abode, in the register.<sup>5</sup>

In the case of births, the registrar is entitled to call upon the

<sup>1</sup> Sec. v.

<sup>2</sup> 6 & 7 Will. IV. c. 86, s. 18.

<sup>3</sup> *Ib.* s. 25.

<sup>4</sup> See *R. v. Price*, 11 Ad. & E. 727.

<sup>5</sup> 6 & 7 Will. IV. c. 86, s. 28.

father or mother of the child, or, in case of their death, illness, absence, or inability, upon the occupier of the tenement in which the child was born, to furnish him with the necessary information.<sup>1</sup> In cases, however, where the child has not been registered within forty-two days, a medical man who was present at the birth is likely, under certain circumstances, to be requested, although he cannot be compelled, to give information to the registrar as to the name and sex of the child, the name and surname of the father, the name and maiden surname of the mother, the rank or profession of the father, and the date of birth; for, where a child has not been registered within that period, the birth cannot be registered unless the father, or guardian, or some person present at the birth, makes, within six calendar months after the birth, a solemn declaration of the above-mentioned particulars before the superintendent registrar,<sup>2</sup> and at the same time signs his or her name, description, and place of abode, in the register.<sup>3</sup>

In *Scotland*, the medical person who has been in attendance during the last illness and until the death of any person, is bound, under a penalty of 40s. in case of failure, to transmit to the registrar, within seven days after the death of such person, a certificate of such death, in a particular form, copies of which are supplied, *gratis*, by the registrar.<sup>4</sup>

*Sec. VI.—The Treatment of Lunatics, and the Management of Private Lunatic Asylums.*

**I. Medical Certificates.**

In all cases where an insane person, not so found by inquisition, is to be received for profit in an unlicensed house, or placed in a licensed house, registered hospital, or public asylum, whether he be a private patient,<sup>5</sup> or a pauper, the order for his reception or admission must be accompanied by at least one certificate, signed by a duly qualified medical practitioner, who has examined such insane person, stating that such patient is a proper person to be taken charge of and detained.

<sup>1</sup> 6 & 7 Will. IV. c. 86, s. 20.

<sup>2</sup> *Ib.* s. 22.

<sup>3</sup> *Ib.* s. 28.

<sup>4</sup> 17 & 18 Vict. c. 80, s. 41, amended by 23 & 24 Vict. c. 85, s. 14.

<sup>5</sup> This term includes every patient who is not a pauper. See 8 & 9 Vict. c. 100, s. 114.

Except in the case of paupers, or where special circumstances prevent,<sup>1</sup> two such certificates are requisite, which must be signed by two medical practitioners, each of whom has separately examined the patient before admission.

### 1. *Form of Certificate.*

"I, the undersigned [*here set forth the qualification entitling the person certifying to practise as a physician, surgeon, or apothecary, ex. gra.*] being a Fellow of the Royal College of Physicians in London, and being in actual practice as a [*physician, surgeon, or apothecary, as the case may be*], hereby certify that I, on the            day of            , at            [*here insert the street, and the number of the house (if any), or other like particulars*], in the county of            [*in any case where more than one medical certificate is required, here insert 'separately from any other medical practitioner'*], personally examined A. B. of            [*insert residence, and profession or occupation, if any*], and that the said A. B. is a [*lunatic, or an idiot, or a person of unsound mind*], and a proper person to be taken charge of and detained, under care and treatment, and that I have formed this opinion upon the following grounds, viz. :—

"1. Facts indicating insanity observed by myself [*here state the facts*].

"2. Other facts (if any) indicating insanity, communicated to me by others [*here state the information, and from whom*].

"(Signed)

"Place of abode

"Dated this            day of            , one thousand eight hundred and            ."

### 2. *Rules to be observed in filling up Certificates.*

1. Each medical practitioner signing such certificate must be a physician, surgeon, or apothecary, duly qualified and registered, and in actual practice as such physician, surgeon, or apothecary.<sup>2</sup>

2. The two medical men who sign the certificates must not be partners, nor must one be an assistant to the other,<sup>3</sup> nor may either of them be a commissioner or visitor;<sup>4</sup> nor, if the patient is to be

<sup>1</sup> In the latter case, two other valid certificates must be obtained within three days after the patient's admission, 16 & 17 Vict. c. 96, s. 5.

<sup>2</sup> 16 & 17 Vict. c. 96, s. 4.

<sup>3</sup> *Ib.* s. 4.

<sup>4</sup> 8 & 9 Vict. c. 100, s. 23.

received into a licensed house, or a hospital, may either certificate be signed by anyone who, or whose father, brother, son, partner, or assistant, is wholly or partly the proprietor of, or a regular professional attendant in, such house or hospital, or has signed the order for the reception of the patient;<sup>1</sup> nor may any person receiving any percentage on, or otherwise interested in, the payments to be made by or on account of the patient, or keeping a licensed house, or attending, in his medical capacity, a licensed house, asylum, hospital, or place where any lunatic may be confined, sign a certificate for the reception of a private patient into any licensed or other house;<sup>2</sup> nor may anyone who, or whose father, brother, son, partner, or assistant, shall sign the order for the reception of a patient into an asylum, sign the certificate for the reception of the same patient.<sup>3</sup>

3. Each medical man must, separately from the other, have personally examined the person to whom the certificate, signed by him, relates, not more than seven clear days previously to the reception of such person into the house or hospital.<sup>4</sup>

4. Each medical man must specify the facts upon which he has formed his opinion that the person to whom the certificate relates is a lunatic, idiot, or person of unsound mind, and distinguish facts observed by himself, from facts communicated to him by others.<sup>5</sup>

5. The certificate need not be dated on the day of examination.

### 3. *Penalties for signing False or Negligent Certificates.*

1. If a physician or surgeon, being a commissioner, or if a physician, surgeon, or apothecary, being a visitor, sign such a certificate, he is liable to a penalty of £10 for each offence.<sup>6</sup>

2. A medical man signing a certificate contrary to any other of the provisions above given is liable to a penalty of £20.<sup>7</sup>

3. Any person falsely stating or certifying anything in such certificate, and any person, not being a physician, surgeon, or apothecary, signing as such, is guilty of a misdemeanor.<sup>8</sup>

<sup>1</sup> 16 & 17 Vict. c. 96, s. 12.

<sup>2</sup> 16 & 17 Vict. c. 97, s. 76.

<sup>3</sup> 16 & 17 Vict. c. 96, s. 10, and 16 & 17 Vict. c. 97, s. 75.

<sup>4</sup> 8 & 9 Vict. c. 100, s. 23.

<sup>5</sup> 16 & 17 Vict. c. 96, s. 13; 16 & 17 Vict. c. 97, s. 122.

<sup>6</sup> *Ib.*

<sup>7</sup> 25 & 26 Vict. c. 111, s. 24.

<sup>8</sup> 16 & 17 Vict. c. 96, s. 4.



4. In addition to these penalties imposed by statute, a medical man who signs any such certificate which is untrue, without taking due care, and making due inquiries, is liable for the consequences which ensue, and damages may be recovered against him, in an action by the person injured thereby.

If, on his own personal examination of the alleged lunatic, he be not satisfied, he is bound to make due inquiries, nor is he less liable for the want of such due care and inquiries, because he has acted *bonâ fide*. This does not, however, apply to a mere error in judgment, or mistake in fact, for, to render him liable, there must be culpable negligence in the discharge of the duties which he assumes, in undertaking to sign such a certificate. For instance, if he be not satisfied with the personal examination, he should make further inquiries, and not sign the certificate solely upon an examination with which he is not satisfied.

It should be remembered, however, that a medical man who is called upon to decide in such a difficult and delicate matter, is only liable where he has wilfully signed a false certificate, or where he has been guilty of *gross* negligence in conducting the examination.

He is not liable in trespass, where he has merely signed the *certificate*,<sup>1</sup> and has done nothing more towards causing the confinement of the alleged lunatic, nor, if he has merely consulted another medical man, who has signed the other certificate, and told him his own idea of the case, is he liable for causing the other to sign such certificate.<sup>2</sup>

5. If the certificate be signed maliciously, and without reasonable or probable cause, it may, also, be treated as a libel, and the person who signed it may be indicted.

In the event of the release of a person who considers he has been unjustly confined, he may obtain, on application to the Commissioners, a copy of the certificates upon which he was confined, without fee or reward.<sup>3</sup>

#### 4. *Valid and Invalid Certificates.*

If any of the formalities above stated be omitted, or any of the rules above given be not strictly carried out, as, for instance, if

<sup>1</sup> As to his liability, if he *direct* the confinement, see p. 276, *ante*.

<sup>2</sup> See, generally, *Hall v. Semple*, 3 F. & F. 337.

<sup>3</sup> 8 & 9 Vict. c. 100, s. 56.

both medical men be present at the examination, or if such examination take place more than seven days before the reception of the lunatic in the house, hospital, or asylum, the certificate will be invalid. It will be invalid, also, if it be founded only upon facts communicated by others.<sup>1</sup> It may be invalid, also, for want of certainty, as, where a medical man stated that he examined the patient at Blackburn, without specifying the street, number of the house, and other like particulars.<sup>2</sup>

The certificates must also state specific facts, upon which the opinion of the insanity of the party confined under them is founded, and it is not enough to conclude the certificate thus:—  
 “ . . . upon the following grounds, viz.: A general suspicion of the motives of every person,” or thus: “ . . . viz.: From his general suspicious and morbid state of mind, and making ungrounded statements in every conversation.”<sup>3</sup> It was held sufficient, however, where the certificate concluded as follows:—  
 “—viz.: that she labours under delusions of various kinds, and that she is dirty and indecent in the extreme;” and even where certain words were struck through with the pen, and the certificate concluded, “and that I have formed this opinion from the conversation I have had this day with the said M. E. R.” In these cases, it was held that the certificates contained that which was equivalent to the formal requisitions of the statute, and that the form was not essential to their validity, but Lord Denman, C.J., in delivering judgment, remarked, “I must own that I wish they had followed the direction of the Act.”<sup>4</sup>

## II. *Medical Visitors of Lunatics (Chancery).*

See chapter V., sec. xviii. *ante*, p. 187.

## III. *Single Patients in Unlicensed Houses.*<sup>5</sup>

A medical practitioner (or other person) may undertake the charge of a single insane patient, in his own residence, without being compelled to take out a licence, or to register his house. Every house, however, in which a lunatic is received for profit, comes

<sup>1</sup> 16 & 17 Vict. c. 96, s. 10; 16 & 17 Vict. c. 97, s. 75.

<sup>2</sup> *R. v. Pinder*; *in re Greenwood*, 24 L. J., Q. B. 148.

<sup>3</sup> In the matter of Fell, a supposed lunatic, 15 L. J., M. C. 25; 3 Dowl. and L., P. C. 373.

<sup>4</sup> See also *Reg. v. Inhabitants of Minster*, 20 L. J., M. C. 48.

<sup>5</sup> See the Report of the Commissioners in Lunacy of 31st March, 1863.

under the superintendence of the Commissioners in Lunacy, and the keeper of every such house incurs certain responsibilities, and is liable to perform certain duties, imposed by various Acts of Parliament, and exposes himself to very serious penalties by neglecting to perform any such duty.

It should be distinctly remembered that the following regulations apply only to persons having charge of a single insane patient, and that no house may be kept for the reception of two or more lunatics, without a licence.<sup>1</sup>

1. No person deriving any profit from the charge may receive into any house, or take care or charge of a patient as a lunatic, or alleged lunatic, without an order, and two medical certificates,<sup>2</sup> except in the case of a person found lunatic by inquisition, in which case an order, signed by the committee appointed by the Lord Chancellor, having an office copy of the appointment annexed, will be sufficient authority, without any such order or medical certificates.<sup>3</sup>

2. Within one clear day after receiving a patient, true copies of the order and certificates, together with a statement of the date of reception, and of the situation and designation of the house into which the patient has been received, as well as of the Christian and surname of the owner or occupier thereof, must be forwarded to the office of the Commissioners in Lunacy.<sup>4</sup>

#### *Form of Notice of Admission.*

"I hereby give you notice that A. B. was admitted into this house as a private patient, on the            day of            , and I hereby transmit a copy of the order and medical certificates on which he was received.

"(Signed),

"Proprietor of

"Dated the            day of            , one thousand eight hundred and            ."<sup>5</sup>

3. There must, also, be forwarded to the said office, a statement

<sup>1</sup> 8 & 9 Vict. c. 100, s. 44.

<sup>2</sup> 8 & 9 Vict. c. 100, s. 90; 16 & 17 Vict. c. 96, ss. 4-8. As to the formalities with regard to the medical certificates, *v. ante*, p. 290, &c.

<sup>3</sup> 25 & 26 Vict. c. 111, s. 22.

<sup>4</sup> 8 & 9 Vict. c. 100, s. 90; 25 & 26 Vict. c. 111, s. 28.

<sup>5</sup> 16 & 17 Vict. c. 96, sch. (C.)

of the condition of the patient, signed by his medical attendant, after two clear days, and before the expiration of seven clear days from the date of reception.<sup>1</sup>

*Form of Statement.*

“Statement with respect to the mental and bodily condition of A. B., admitted into this house as a private patient on the       day of       .

“I have this day [*some day not less than two clear days after the admission of the patient*] seen and examined A. B., the patient mentioned above, and hereby certify that, with respect to mental state, he [*or she*]       , and that, with respect to bodily health and condition, he [*or she*]

“(Signed),       ,

“Medical Proprietor of       .

“Dated the       day of       , one thousand eight hundred and       .”<sup>2</sup>

4. The order and certificates must not be signed by any person receiving any percentage on, or otherwise interested in, the payments for the patient, nor by any medical attendant who may, in his medical capacity, attend the house where the patient is confined, nor must the certificates be signed by the father, brother, son, partner, or assistant of the person having the care or charge of the patient.<sup>3</sup>

5. Except in the case of a person found lunatic by inquisition,<sup>4</sup> the patient must be visited, at least once in two weeks, by a physician, surgeon, or apothecary, who did not sign either of the certificates of insanity, and who derives no profit, and who is not a partner, father, son, or brother, of any person deriving profit from the care or charge of the patient.<sup>5</sup>

6. Such medical man must, at each visit, enter in a book to be kept at the house, according to the subjoined form, and to be called the “Medical Visitation Book,” a statement of the condition of the patient’s health, both mental and bodily, and also of the condition of the house.<sup>6</sup>

<sup>1</sup> 25 & 26 Vict. c. 111, s. 41.

<sup>2</sup> 16 & 17 Vict. c. 96, sch. (C.)

<sup>3</sup> 25 & 26 Vict. c. 111, s. 24; and 16 & 17 Vict. c. 96, s. 12.

<sup>4</sup> 25 & 26 Vict. c. 111, s. 22.

<sup>5</sup> 8 & 9 Vict. c. 100, s. 90.

<sup>6</sup> 8 & 9 Vict. c. 100, s. 90; 25 & 26 Vict. c. 111, s. 42.



*Medical Visitation Book.*

Date.	Mental state and progress.	Bodily health and condition.	Restraint or seclusion since last entry. When, and how long? By what means, and for what reason?	Visits of friends.	State of house, bed, and bedding, &c.

7. These visits may, by special permission of the Commissioners in Lunacy, be made less frequently than once in every two weeks; but, in such case, if the patient be under the care or charge of a medical man, such medical man must keep a book according to the form given above, to be called the "Medical Journal," and must himself make the necessary entry therein, once, at the least, in every two weeks.<sup>1</sup>

8. Every physician, surgeon, or apothecary, under whose care a single patient may be, or who visits a single patient, must, on the 10th of January, or within seven days thereof, in every year, report in writing to the commissioners the state of health, mental and bodily, of the patient, and such other circumstances as he may deem necessary to be communicated.<sup>2</sup>

9. The "Medical Visitation Book," and the "Medical Journal," and the order and certificates, must be so kept that they may be accessible to the commissioners whenever they may visit the patient.<sup>3</sup>

10. Notice must be forwarded to the commissioners, in case of the discharge, death, removal, escape, or recapture of a patient. In case of removal, the exact address and designation of the house must be specified, and in the case of escape, the Christian and surname of the patient, his then state of mind, and the circumstances connected with the escape.<sup>4</sup>

*Form of Notice of Discharge or Death.*<sup>5</sup>

"I hereby give you notice that A. B., a private patient, received into this house on the            day of            , was

<sup>1</sup> 16 & 17 Vict. c. 96, s. 14.

<sup>2</sup> 16 & 17 Vict. c. 96, s. 16.

<sup>3</sup> 8 & 9 Vict. c. 100, s. 90; 16 & 17 Vict. c. 96, s. 14.

<sup>4</sup> 8 & 9 Vict. c. 100, ss. 53, 54, 55, 90; 16 & 17 Vict. c. 96, ss. 21, 22.

<sup>5</sup> 8 & 9 Vict. c. 100, sch. (G. 2); 16 & 17 Vict. c. 97, sch. (F.)

discharged therefrom recovered [or relieved, or not improved],  
by the authority of [or died therein on the  
day of \*].

“(Signed),

“Proprietor of house at

“Dated this day of , one thousand eight  
hundred and

\* *In case of death add*,—“And I further certify that C. D. was  
present at the death of the said A. B., and that the apparent  
cause of death of the said A. B. [ascertained by *post mortem*  
examination (*if so*)] was .”

11. Notice of the death of the patient must also be forwarded to  
the coroner of the district.<sup>1</sup>

12. If it be proposed to remove the patient to the care or charge  
of another person, consent to an order of transfer must previously  
be obtained from the commissioners, otherwise a fresh order and  
fresh certificates will be necessary.<sup>2</sup>

13. Where any person having the care of a single patient pro-  
poses to change his residence, and remove the patient to such  
new residence, seven clear days' notice of the proposed change  
must be sent to the commissioners, and also to the person who  
signed the order for the reception of the patient.<sup>3</sup>

14. If it should be desired to take or send the patient, under  
proper control, to any specified place or places, for any definite  
time, for the benefit of his health, the approval, in writing, of the  
person who signed the order for the reception of the patient must  
be produced to the commissioners (unless, on cause shown, they  
dispense with the same), and the consent of two of the com-  
missioners must be obtained.<sup>4</sup>

15. One or two commissioners may, at all reasonable times, visit  
the house, and inquire as to the treatment and state of health, both  
bodily and mental, of the patient, and report thereon to the com-  
missioners;<sup>5</sup> or, on the request in writing of the commissioners, or  
any two of them, such visits may be made by the visitors of the  
county or borough in which the house is situate.<sup>6</sup>

16. On the representation of the visitors, accompanied by a copy

<sup>1</sup> 25 & 26 Vict. c. 111, s. 44.

<sup>2</sup> 16 & 17 Vict. c. 96, s. 20.

<sup>3</sup> 16 & 17 Vict. c. 96, s. 22.

<sup>4</sup> 8 & 9 Vict. c. 100, s. 92.

<sup>5</sup> 16 & 17 Vict. c. 96, s. 22.

<sup>6</sup> 16 & 17 Vict. c. 96, s. 15.

of the report, the Lord Chancellor may order the removal of the patient, and any person detaining the patient for three days after the receipt of a copy of such order, will be guilty of a misdemeanor.<sup>1</sup>

17. Any commissioner may give an order for the admission to the patient of any friend or relation, or person named by such friend or relation, either for a limited number of times, or generally, at all reasonable times, and with or without a restriction that the interview is to take place in the presence of a keeper, and any person refusing admission to, or obstructing, a person producing such order, is liable, for each offence, to a penalty not exceeding £20.<sup>2</sup>

18. Any letter written by the patient, addressed to the commissioners, committees of visitors, or committee appointed by the Lord Chancellor, must be forwarded unopened. Other letters must also be forwarded, unless the person having the charge of the patient prohibit their transmission, by endorsement to that effect on the letter, in which case he must lay such letter before the commissioners or visitors at their next visit. Any breach of these rules renders the offender liable to a penalty not exceeding £20.<sup>3</sup>

19. If any proceedings at law be commenced against the person having charge of the patient, for taking, detaining, or retaking such patient, he may plead the order and certificates for receiving such patient, in bar of all such proceedings.<sup>4</sup>

20. Any person having charge of a single patient, who receives such patient without a proper order and certificates, or who neglects to transmit copies thereof to the commissioners, or who fails to cause such patient to be visited fortnightly by a medical man (not disqualified as before mentioned),<sup>5</sup> or who makes any untrue entry in the "Medical Visitation Book", or who abuses, illtreats, or wilfully neglects such patient, or who neglects to forward to the coroner notice of the death of a patient, is guilty of a misdemeanor.<sup>6</sup>

#### IV. *Licensed Houses, or Private Asylums.*

If a medical man (or other person) determine to establish a private lunatic asylum, or to keep a house for the reception of

<sup>1</sup> 8 & 9 Vict. c. 100, s. 93.

<sup>2</sup> 8 & 9 Vict. c. 100, s. 85.

<sup>3</sup> 25 & 26 Vict. c. 111, s. 40.

<sup>4</sup> 8 & 9 Vict. c. 100, s. 99.

<sup>5</sup> Par. 5, *ante*.

<sup>6</sup> 8 & 9 Vict. c. 100, s. 90; 16 & 17 Vict. c. 96, s. 9; 25 & 26 Vict. c. 111, s. 44.

two or more lunatics, or, generally, to undertake the care or charge of more than one lunatic in his house, he must take out a licence for the house,<sup>1</sup> and conform to the various statutory provisions affecting such establishments. The following regulations apply where such licence is taken out by a medical man :—

1. *The Licence.*

1. If the house be situated within the immediate jurisdiction of the Commissioners in Lunacy, that is to say, generally speaking, within seven miles of any part of London, Westminster, or Southwark, the licence must be obtained from such commissioners;<sup>2</sup> if it be situated beyond those limits, the licence will be granted by the justices for the county or borough, assembled in general or quarter sessions.<sup>3</sup>

2. These licences are granted by the commissioners, at their quarterly meetings, on the first Wednesday in February, May, July, and November in each year,<sup>4</sup> or at a special meeting duly summoned for the purpose.<sup>5</sup> If granted by the justices in a borough, the written consent of the recorder is necessary.<sup>6</sup> No person may act in granting such licence who is, or has been, within a year preceding, interested in any such licensed house, or the profits arising from the reception of lunatics therein.<sup>7</sup>

The commissioners or justices may grant or withhold the licence, as they may think fit;<sup>8</sup> the latter must, however, before they decide, wait for a report from the commissioners, whose duty it is to inspect the premises, and transmit a report thereon to the clerk of the peace, before the licence is granted.<sup>9</sup>

3. The licence may include two or more houses belonging to a proprietor or joint proprietors, if such houses be separated only by land in the same occupation, or by a road,<sup>10</sup> but the person, or one of the persons applying for a licence, must intend to reside on the premises.<sup>11</sup>

4. If the house be within the jurisdiction of the commissioners, the applicant must give them, fourteen days prior to their

<sup>1</sup> 8 & 9 Vict. c. 100, s. 44. Any person receiving more than one lunatic in a house without a licence, or keeping them there after the licence has expired for two months, or has been revoked, is guilty of a misdemeanor. *Ib.* s. 44, and 18 & 19 Vict. c. 105, s. 18.

<sup>2</sup> 8 & 9 Vict. c. 100, s. 14.

<sup>3</sup> *Ib.* s. 17.

<sup>4</sup> *Ib.* s. 15.

<sup>5</sup> *Ib.* s. 16.

<sup>6</sup> *Ib.* s. 31.

<sup>7</sup> *Ib.* s. 23.

<sup>8</sup> *Ib.* ss. 14, 17.

<sup>9</sup> 25 & 26 Vict. c. 111, s. 14.

<sup>10</sup> 16 & 17 Vict. c. 96, s. 1.

<sup>11</sup> *Ib.* s. 2.



meeting, a notice containing his Christian and surname, place of abode and occupation, a description of his estate or interest in the house, accompanied by a plan of such house, drawn according to a scale not less than  $\frac{1}{8}$ -inch to a foot, together with a description of the premises, and statements as to the amount of ground to be set apart for recreation, the number of patients proposed to be received, the number of each sex, and the means for keeping the sexes apart. If the application be for the renewal of a licence, he must also furnish a statement of the names and number of patients of each or either sex, in the house, distinguishing between private and pauper patients.<sup>1</sup> If he make any untrue statement or return, he will be guilty of a misdemeanor.<sup>2</sup>

5. If the house be beyond the jurisdiction of the commissioners, the applicant must give a similar notice, accompanied by similar plans and statements, to the clerk of the peace for the county or borough, fourteen days before the quarter sessions,<sup>3</sup> and must furnish a similar statement, in case of an application for the renewal of a licence.<sup>4</sup> He must also transmit copies of such notice, plans, and statements, to the commissioners.<sup>5</sup>

6. Before granting a new licence, the commissioners require the applicant to answer the following questions:—

1. State your age, and whether you are married or single, and whether you propose to reside on the premises to be licensed.

2. If married, is it proposed that your wife (or husband) should reside in the house to be licensed, and take any, and if any, what part in the charge and management of the patients?

Have you any children, and if so, of what age and sex, respectively, and is it proposed that they, or any of them, should be resident in the licensed house?

3. Are you a medical man? If so, state where you received your professional and general education, what degree you have received, or examination you have passed, and where, and for how long you have been engaged in the practice of your profession. If not a medical man, &c.

4. State the nature and amount of your education, training

<sup>1</sup> 8 & 9 Vict. c. 100, ss. 24, 29.

<sup>2</sup> *Ib.* ss. 27, 29.

<sup>3</sup> *Ib.* s. 24.

<sup>4</sup> *Ib.* s. 29.

<sup>5</sup> 25 & 26 Vict. c. 111, s. 14.

and experience with reference to the care and treatment of the insane, and when and where, and under what circumstances obtained.

5. Produce testimonials, or other satisfactory evidence as to your skill and experience as a medical practitioner, and as a person fit to be intrusted with the charge of the insane, and also as to your possession of the necessary pecuniary means for enabling you to carry on and maintain the establishment in a comfortable state.

6. What is the nature and extent of the interest which you possess in the house and premises proposed to be licensed? Have any other persons, and who, by name and description, any and what interest in the house and premises, jointly with yourself, or otherwise, or in the profits to be derived from the establishment?

7. What class and number of patients, and of which sex, do you propose to receive into the house, and paying what weekly or other rate of board?

7. The licence is granted for such period, not exceeding thirteen calendar months, as the commissioners or justices, respectively, may think fit.<sup>1</sup> It must be stamped with a 10s. stamp,<sup>2</sup> and a charge is to be paid of 10s. for each private patient, and 2s. 6d. for each pauper proposed to be received, but the total amount must be made up to £15, if it fall short of that sum.<sup>3</sup>

8. If the licensee die, or become incapable, the commissioners, or any three justices for the county or borough, as the case may be, may transfer the licence, for the unexpired time, to any person approved by them; but if there be more than one licensee, the licence remains in force as regards the other or others.<sup>4</sup>

9. On the recommendation of the commissioners, if the licence be granted by them,<sup>5</sup> or of a majority of the justices of a county or borough, in general or quarter sessions assembled, if the licence be granted by the justices,<sup>6</sup> the Lord Chancellor may revoke the licence, and, on the recommendation of the commissioners, the Lord Chancellor may prohibit the renewal of a licence, whether granted by the commissioners or the justices.<sup>7</sup> In each case, however, due notice must be given to the person concerned. After the revoca-

<sup>1</sup> 8 & 9 Vict. c. 100, s. 30.

<sup>4</sup> *Ib.* s. 39.

<sup>5</sup> *Ib.* s. 42.

<sup>2</sup> *Ib.* s. 30.

<sup>6</sup> *Ib.* s. 41.

<sup>3</sup> *Ib.* s. 32.

<sup>7</sup> *Ib.* s. 42.

tion and expiration of the licence, the powers of the commissioners and visitors, and the provisions of the Lunacy Acts remain in force so long as any lunatics are detained in the house.<sup>1</sup>

10. The commissioners must examine the licence, on their first visit to the house after such licence has been granted, and if it be correct, they should sign it, but if it be informal, they should make an entry to that effect in the visitors' book.<sup>2</sup>

11. A licensee infringing the terms of his licence, incurs a penalty not exceeding £50, for each offence.<sup>3</sup>

## 2. *Government of the House, and Duties with regard to Patients.*

1. The commissioners may, with the sanction of one of the Secretaries of State, make regulations for the government of any licensed house.<sup>4</sup>

2. Except in the case of a lunatic, so found by inquisition, no patient may be received without an order and two medical certificates.<sup>5</sup> The order must be signed before the patient is admitted, and is only valid for one month after the date of signature.<sup>6</sup> A patient may be received with only one medical certificate, if special circumstances prevent the friends from obtaining two. Such circumstances must, however, be stated in the order, and, within three days after his admission, two other valid certificates must be obtained.<sup>7</sup> Great care should be used by the licensee to see that these certificates are in order, and fulfil all the statutory requirements.<sup>8</sup> The proprietor of a licensed house cannot be compelled to take in a lunatic pauper, where the asylum is full, except in pursuance of a subsisting contract, but, if he do so, only one medical certificate will be requisite.<sup>9</sup>

3. The form of, and rules with regard to, notice of admission, and statement as to health of a patient are, in the case of a house licensed by the commissioners, the same as in the case of a single patient in an unlicensed house.<sup>10</sup> Where the house is licensed by the justices, the same rules apply, but a copy of the same documents

<sup>1</sup> 18 & 19 Vict. c. 105, s. 9.

<sup>2</sup> 8 & 9 Vict. c. 100, s. 61; 25 & 26 Vict. c. 111, s. 29.

<sup>3</sup> 25 & 26 Vict. c. 111, s. 17.

<sup>4</sup> 16 & 17 Vict. c. 96, s. 31.

<sup>5</sup> See *ante*, p. 290 & p. 295.

<sup>6</sup> 25 & 26 Vict. c. 111, s. 23.

<sup>7</sup> 16 & 17 Vict. c. 96, s. 5.

<sup>8</sup> See *ante*, p. 293.

<sup>9</sup> 16 & 17 Vict. c. 96, s. 7; 16 & 17 Vict. c. 97, s. 78.

<sup>10</sup> *Ante*, pp. 295-6; 8 & 9 Vict. c. 100, s. 52.



must *also* be forwarded to the clerk of the visitors, after two, and within seven days from the date of admission of the patient.<sup>1</sup>

4. The licensee may not receive in the house a person who is not a lunatic, as a boarder for profit,<sup>2</sup> but, with the assent in writing of two or more of the commissioners, or of two or more of the visitors, as the case may be, he may keep as a boarder, for such time as may be specified in the assent, a discharged patient, or any person who has been, within the preceding five years, a lunatic under restraint or care,<sup>3</sup> or, with the assent of two commissioners, he may receive a relative or friend of a patient in the house, for the benefit of such patient.<sup>4</sup>

5. If any addition or alteration is proposed to be made to or in the premises, notice, accompanied by a plan drawn according to scale, and description,<sup>5</sup> must be sent to the commissioners, or the clerk of the peace, as the case may be, and the consent, in writing, of the commissioners or visitors, respectively, must be obtained.<sup>6</sup>

6. If the licensee wish to transfer the patients to a new house, he must observe the same formalities as when he first applied for a licence, and must also give notice to the person who signed the order, in the case of a private patient, or to the relieving officer or overseer, in the case of a pauper.<sup>7</sup>

6. The rules as to the correspondence of patients, and visits of friends, are the same as in the case of single patients in unlicensed houses.<sup>8</sup>

7. Notice must be given, within two days, (under a penalty of £10) to the commissioners, or clerk to the visitors, as the case may be, of the escape and recapture of a patient.<sup>9</sup> If the patient be recaptured within fourteen days, the original order and certificates remain in force; otherwise, new ones must be obtained.<sup>10</sup>

8. The rules as to the temporary absence of patients, for the benefit of their health, are the same as in the case of single patients in unlicensed houses,<sup>11</sup> substituting the word visitors for commissioners, in the case of a house licensed by the justices.<sup>12</sup> Under similar regulations, a private patient may be permitted to be absent

<sup>1</sup> 8 & 9 Vict. c. 100, s. 52; 16 & 17 Vict. c. 96, s. 24; 25 & 26 Vict. c. 111, s. 28.

<sup>2</sup> 16 & 17 Vict. c. 96, s. 4.

<sup>3</sup> *Ib.* s. 6; 25 & 26 Vict. c. 111, s. 18.

<sup>4</sup> 16 & 17 Vict. c. 96, s. 6.

<sup>5</sup> See *ante*, tit. "Licence," par. 4.

<sup>6</sup> 8 & 9 Vict. c. 100, s. 26; 25 & 26 Vict. c. 111, s. 15.

<sup>7</sup> 8 & 9 Vict. c. 100, s. 40.

<sup>8</sup> *Ante*, p. 299, pars. 17 & 18.

<sup>9</sup> 8 & 9 Vict. c. 100, s. 53.

<sup>10</sup> *Ib.* s. 87.

<sup>11</sup> *Ante*, p. 298, par. 14.

<sup>12</sup> 8 & 9 Vict. c. 100, s. 86.



on trial, for such period as may be thought fit. In the case of a pauper patient, any two commissioners, or visitors, as the case may be, may give a similar permission, of their own authority. If the patient do not return at the expiration of the period, he may be retaken within fourteen days, unless a medical certificate that he is cured be forwarded to the proprietor of the house.<sup>1</sup>

9. Two or more commissioners may order the transfer of a patient from one house to another,<sup>2</sup> or the discharge of a patient in a house licensed by themselves,<sup>3</sup> or, in a house licensed by the justices, after two special visits.<sup>4</sup> The person who signed the order for the reception of a private patient may order his discharge or removal,<sup>5</sup> unless the patient be certified to be dangerous, in which case, the consent of the commissioners, or visitors, as the case may be, must be obtained.<sup>6</sup> The same person may also, with the consent of two commissioners, order his transfer.<sup>7</sup> Under like conditions, the discharge or removal of a pauper patient may be ordered by the guardians, or by an officiating clergyman and one of the overseers, or by two justices, as the case may be.<sup>8</sup>

10. On the recovery of a patient, notice must be given to the person who signed the order or made the last payment, or, in the case of a pauper, to the guardians, overseers, or clerk of the peace, and if he be not removed within fourteen days, notice should be sent to the commissioners, or commissioners and visitors, as the case may be.<sup>9</sup>

11. Notice of discharge must be forwarded to the commissioners, or to the commissioners and clerk to the visitors, as the case may be, within two clear days.<sup>10</sup>

12. On the death of a patient, notice<sup>11</sup> thereof must (under a penalty of £50) be forwarded to the commissioners, or to the commissioners and clerk to the visitors, as the case may be, and also to the person who signed the order for the patient's confinement, to the registrar of deaths for the district, and to the coroner for the county or borough.<sup>12</sup>

<sup>1</sup> 25 & 26 Vict. c. 111, s. 38.

<sup>2</sup> 16 & 17 Vict. c. 97, s. 82.

<sup>3</sup> 8 & 9 Vict. c. 100, s. 76.

<sup>4</sup> *Ib.* s. 77.

<sup>5</sup> *Ib.* s. 72.

<sup>6</sup> *Ib.* s. 75.

<sup>7</sup> 16 & 17 Vict. c. 96, s. 20.

<sup>8</sup> 8 & 9 Vict. c. 100, ss. 74-75.

<sup>9</sup> 16 & 17 Vict. c. 96, s. 18.

<sup>10</sup> 8 & 9 Vict. c. 100, s. 54. The form is the same as *ante*, p. 297.

<sup>11</sup> See form of notice *ante*, p. 297.

<sup>12</sup> 8 & 9 Vict. c. 100, s. 55; 16 & 17 Vict. c. 96, s. 19.

13. If an attendant be dismissed for misconduct, notice of the dismissal and the cause thereof must (under a penalty of £10) be forwarded to the commissioners, within a week.<sup>1</sup> Any attendant or person employed in the house who illtreats or neglects a patient, is guilty of a misdemeanor,<sup>2</sup> and may be indicted for the same, or fined, on conviction, a sum not exceeding £20,<sup>3</sup> and any officer or servant negligently permitting, or conniving at, the escape of a patient, is liable to a penalty of £20.<sup>4</sup>

14. In a conspicuous part of the house must be hung up a copy of the plan given to the commissioners or justices, on applying for the licence.<sup>5</sup>

### 3. Books to be kept.

#### a. The Book of Admissions.

This must be kept according to the form prescribed by statute.<sup>6</sup> All the columns, except those headed "Form of mental disorder," "Date of discharge or death," and "Discharged," must be filled in within two days from the date of admission of the patient (under a penalty of £2), and the form of the patient's mental disorder must be filled in within seven days from the same date (under a like penalty).<sup>7</sup>

#### b. The Medical Visitation Book.

This must be kept in the form given below, and the resident medical proprietor must enter therein, once in every week, the various particulars, under their respective heads.<sup>8</sup>

Date.	Number and Class of Patients.				Patients who are, or since the last entry, have been, under restraint or in seclusion; when, and for what period, and reasons; and, in cases of restraint, by what means.				Patients under medical treatment, and for what (if any) bodily disorder.				Deaths, injuries, and violence to patients, since the last entry.	
	Private.		Pauper.		Restraint.		Seclusion.							
M.	F.	M.	F.	Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.			

<sup>1</sup> 16 & 17 Vict. c. 96, s. 26.

<sup>2</sup> 8 & 9 Vict. c. 100, s. 56.

<sup>3</sup> 16 & 17 Vict. c. 96, s. 9.

<sup>4</sup> 25 & 26 Vict. c. 111, s. 39.

<sup>5</sup> 8 & 9 Vict. c. 100, s. 66.

<sup>6</sup> *Ib.* Sch. (E). See *post*, Appendix, s. 3, No. 7.

<sup>7</sup> *Ib.* ss. 50 & 51.

<sup>8</sup> *Ib.* s. 59; 16 & 17 Vict. c. 96, s. 25, and Sch. (D).

*c. Register of Discharges and Deaths.*

This book must also be kept according to the form prescribed by statute,<sup>1</sup> and the necessary entries must be made therein within two days after the removal, discharge, or death of a patient, or the proprietor of the house will be guilty of a misdemeanor.<sup>2</sup>

*d. The Visitors' Book.*

No particular form is prescribed for this book. The visiting commissioners, or visitors, are to enter therein the result of their inspections and inquiries, with any observations they may think proper. With this book, however, must be bound up a Queen's printer's copy of the Act 8 and 9 Vict. c. 100, and of 16 and 17 Vict. c. 96.<sup>3</sup>

*e. The Patients' Book.*

No particular form is prescribed for this book. The visiting commissioners, or visitors, are to enter therein such observations as they may think fit respecting the state of mind or body of any patient.<sup>4</sup>

*f. The Medical Case Book.*

The following is the form in which this book must be kept, as ordered by the Lunacy Commissioners, under authority of the Act:<sup>5</sup>—

1st. A statement of the name, age, sex, and previous occupation of the patient, and whether married, single, or widowed.

2nd. An accurate description of the external appearance of the patient upon admission, habit of body, and temperament, appearance of eyes, expression of countenance, and any peculiarity in form of head; of the physical state of the vascular and respiratory organs, and of the abdominal viscera, and their respective functions; of the state of the pulse, tongue, skin, &c.

3rd. A description of the phenomena of mental disorder, the manner and period of the attack, with a minute account of the symptoms, and the changes produced in the patient's temper or disposition, specifying whether the malady displays itself by any, and what illusions, or irrational conduct, or morbid or dangerous habits or propensities; whether it has

<sup>1</sup> 8 & 9 Vict. c. 100, Sch. (G i.) See *post*, Appendix, s. 3, No. 8.      <sup>2</sup> *Id.* s. 54.

<sup>3</sup> *Id.* s. 66; 16 & 17 Vict. c. 96, s. 37.

<sup>4</sup> 8 & 9 Vict. c. 100, s. 66.

<sup>5</sup> 8 & 9 Vict. c. 100, s. 60.

occasioned any failure of memory or understanding, or is connected with epilepsy, or ordinary paralysis, or symptoms of general paralysis, such as tremulous movements of the tongue, defect of articulation, or weakness or unsteadiness of gait.

4th. Every particular which can be obtained respecting the previous history of the patient; what are believed to have been the predisposing and exciting causes of the attack; what the previous habits, active or sedentary, temperate or otherwise; whether the patient has experienced any former attacks, and if so, at what periods; whether any relatives have been subject to insanity, and whether the present attack has been preceded by any premonitory symptoms, such as restlessness, unusual elevation or depression of spirits, or any remarkable deviation from ordinary habits and conduct; and whether the patient has undergone any, and what, previous treatment, or been subjected to personal restraint.

5th. During the first month after admission, entries to be made at least once in every week, and oftener, where the nature of the case requires it. Afterwards, in recent or curable cases, entries to be made at least once in every month, and in chronic cases subject to little variation, once in every three months.

6th. In all cases, an accurate record to be kept of the medicines administered, and other remedies employed, with the results, and also of all injuries and accidents.

7th. The several particulars to be set forth in a manner so clear and distinct as to admit of being easily referred to and extracted.

7. In an action against the keeper of a licensed house, for negligent and unskilful treatment of a patient, inspection may be ordered, under 14 & 15 Vict. c. 99, s. 6, of all these books, and also of the licence, orders, certificates, correspondence, &c., relating to the patient.<sup>1</sup>

#### 4. *Supervision.*

1. If the house be licensed by the commissioners, it will be visited by two or more commissioners, without previous notice, four times at least in the year, but, if the house do not receive

<sup>1</sup> Hill v. Philp, 7 Ex. 232.



pauper patients, the Lord Chancellor may direct that it be visited twice only in the year.<sup>1</sup> It may, in addition, be visited at any time, and must be visited twice in the year at least, by one or more commissioners.<sup>2</sup> It may also be visited and inspected, at any hour of the night, by any two or more commissioners.<sup>3</sup> Special visits may also be made by the commissioners to any patient, and they may order the discharge of such patient, after two visits, unless he be a lunatic so found by inquisition.<sup>4</sup> The commissioners are invested with powers, and are bound to inspect every part of the house and grounds; to see every patient; to ascertain if any patient is under restraint, and, if so, why; to make such inquiries as they may think fit; and to examine the licence, orders, certificates, books, &c. They may also call for any papers or documents relating to any patient, and inquire as to the money paid to the proprietor on behalf of any patient; as to when divine service is performed, and the effect thereof; as to the occupations and amusements provided for the patients; whether there has been adopted any system of non-coercion, and, if so, the effect thereof; as to the classification of patients; the condition of the pauper patients (if any) when first received, and as to their dietary, &c.<sup>5</sup> They must also, as before stated, enter the results of their investigation in the visitors' book. Any person neglecting to show any patient, or any part of the premises, or refusing to produce any books, returns, or documents called for, or not giving full and true answers to questions put, is guilty of a misdemeanor.<sup>6</sup> The proprietor must also (under a penalty of £10) transmit to the commissioners, within three days after every visit, a copy of all entries made by the visiting commissioners.<sup>7</sup>

2. If the house be licensed by the justices, it will be visited both by the commissioners, and by visitors specially appointed. Two, at least, of the commissioners must visit it twice, at least, in every year. One or more commissioners may also visit such house at any time, either by day or night. Any two commissioners may make special visits to a particular patient, and order his discharge, under certain restrictions. The powers and duties of the visiting commissioners, and the duties and obligations of the proprietor of

<sup>1</sup> 8 & 9 Vict. c. 100, s. 61.

<sup>2</sup> 25 & 26 Vict. c. 111, s. 29.

<sup>3</sup> 8 & 9 Vict. c. 100, s. 71.

<sup>4</sup> *Ib.* ss. 76, 81.

<sup>5</sup> *Ib.* ss. 61, 64, 65; 25 & 26 Vict. c. 111, s. 35.

<sup>6</sup> *Ib.*

<sup>7</sup> 8 & 9 Vict. c. 100, s. 67.

the house, are the same as in the case of a house licensed by the commissioners. The proprietor must, however, forward a copy of all entries made by the visiting commissioners, both to the commissioners, and also to the clerk of the visitors, within three days.<sup>1</sup>

The visitors are appointed by the justices for the county or borough, at the Michaelmas general or quarter sessions in every year. They consist of three or more justices, and at least one physician, surgeon, or apothecary.<sup>2</sup> In boroughs, the consent in writing of the recorder is also necessary to the appointment of any visitor.<sup>3</sup> The clerk of the peace, or some other person is to be appointed clerk to the visitors, and an assistant clerk may also be appointed,<sup>4</sup> but no person interested in a licensed house, or being medical attendant on any patient therein, may hold any one of the three offices.<sup>5</sup> All these officers are sworn to secrecy. The visitors are summoned by their clerk to meet at such time and place, for the purpose of executing their duties, as the justices, in general or quarter sessions, may appoint, but every such summons and meeting is to be made and held as privately as may be, and in such manner that no one interested in, or connected with any house to be visited may have notice of such intended visitation.<sup>6</sup>

Two at least of these visitors, one being a medical visitor, must visit each licensed house within their jurisdiction four times a year at least, and also at such other times as the justices who licensed the house may direct.<sup>7</sup> One or more of them must also visit each such house, twice at least in every year, and may visit it at any time.<sup>8</sup> Any two may visit and inspect the house, at any hour of the night.<sup>9</sup> Any two or more, one being a medical man, may make special visits to a patient, and, after two such visits, order his discharge.<sup>10</sup> The powers of the visitors are the same as those of the visiting commissioners, and the proprietor of the house is under the same obligations as to his conduct towards the visitors as he is with regard to the visiting commissioners. He

<sup>1</sup> 8 & 9 Vict. c. 100, ss. 61, 63-69, 71-77, and 79-81; 25 & 26 Vict. c. 111, ss. 29, 35, 36.

<sup>2</sup> The medical visitors are to be remunerated, 8 & 9 Vict. c. 100, s. 20.

<sup>3</sup> 8 & 9 Vict. c. 100, ss. 17, 31.

<sup>4</sup> *Ib.* ss. 21, 22.

<sup>5</sup> *Ib.* s. 23.

<sup>6</sup> *Ib.* s. 21.

<sup>7</sup> *Ib.* s. 62.

<sup>8</sup> 25 & 26 Vict. c. 111, s. 29.

<sup>9</sup> 8 & 9 Vict. c. 100, s. 71,

<sup>10</sup> *Ib.* ss. 78, 81.

must, moreover, forward, within three days after each visit, a copy of any entries made by the visitors in his books, both to the clerk to the visitors, and also to the Lunacy Commissioners.<sup>1</sup>

3. If paupers are received in the house, the visiting commissioners and visitors, respectively, may determine and regulate the dietary of such patients, and if such determination and regulation of any visitors and of the visiting commissioners happen not to agree with each other, the determination and regulation of the visiting commissioners must be followed.<sup>2</sup> The guardians or overseers of any union or parish, and any physician, surgeon, or apothecary, appointed by them, respectively, may also visit and examine, between the hours of eight in the morning and six in the evening, any such patient in the house, chargeable to such union or parish.<sup>3</sup>

#### V. *Statutes and References.*

The following are the principal statutes by which the duties of medical men with regard to the care and treatment of lunatics, and the management of asylums, &c., are defined :<sup>4</sup>—

	A.D.
1 & 2 Vict. c. 14, ss. 2, 3 .. .. .	1838
3 & 4 Vict. c. 54, s. 1 .. .. .	1840
8 & 9 Vict. c. 100 .. .. .	1845
16 & 17 Vict. c. 70, ss. 16-21, 25 .. .. .	1853
16 & 17 Vict. c. 96 .. .. .	"
16 & 17 Vict. c. 97 .. .. .	"
18 & 19 Vict. c. 105, ss. 17, 18 .. .. .	1855
23 & 24 Vict. c. 75 .. .. .	1860
25 & 26 Vict. c. 86, ss. 19-24; 26, 27 .. .. .	1862
25 & 26 Vict. c. 111 .. .. .	"

For books of reference on the subject, see a collection of the Lunacy Acts, with notes and references, by Danby P. Fry, 1864; Phillips's "Law concerning Lunatics, Idiots, and Persons of Unsound Mind, 1858," and Shelford's practical treatise on the law concerning lunatics, idiots, and persons of unsound mind, 1847. See, also, the General Orders in Lunacy of, 1844, '45, '52, '53, '54, '55, '56 and '62, and the various reports of the Commissioners in Lunacy.

<sup>1</sup> 8 & 9 Vict. c. 100, s. 67,

<sup>2</sup> *Ib.* s. 82.

<sup>3</sup> 16 & 17 Vict. c. 97, s. 65.

<sup>4</sup> See, also, the Lunacy Regulation (Ireland) Act, 1871 (34 Vict. c. 22).



*Sec. VII.—The Validity of Gifts from, and Contracts made with, Patients.*

No person who stands in a relation of special confidence to another, so as to acquire habitual influence over his mind, can accept any gift or benefit from the person who is under the dominion of that influence, without danger of having the gift set aside, in a court of equity. If it can be shown that a sufficient protection was interposed against the exercise of such influence, there may be a case to sustain the gift, but the principle prevails where there exists a relation which naturally creates influence over the mind,<sup>1</sup> such as the relation between medical adviser and patient, and the court will infer, from the mere fact of the existence of such relationship between the parties, the probability of such undue influence having been exerted.<sup>2</sup> In such cases, therefore, the burthen of proving that the transaction is righteous falls upon the person taking the benefit, and in order to prove this, he must show, not only that the donor knew what he was doing, but also how the intention was produced.<sup>3</sup> The court does not blame or discountenance the influence itself, flowing from such relations, but, on the contrary, considers the due exercise of it useful and advantageous to society; it holds, however, as an inseparable condition, that this influence should be exerted for the benefit of the person subject to it, and not for the advantage of the person possessing it,<sup>4</sup> and in questions of this kind, medical attendants are within that class of persons whose acts, when dealing with their patients, are watched with great jealousy.<sup>5</sup>

Where a surgeon and apothecary obtained from a patient, eighty-five years of age, an agreement to pay him £25,000, professing to be founded partly upon gratitude for past services (which had been completed two years before the agreement was signed, and the regular charge for which had been previously paid), and partly upon the consideration that the patient should have medical and surgical assistance free during the remainder of his life, which agreement was settled and prepared without the intervention of any third person, and carefully concealed until after

<sup>1</sup> See *per* Stuart, V.C., *Nottidge v. Prince*, 29 L. J., Cha. 865.

<sup>2</sup> *Per* the Master of the Rolls, *Hoghton v. Hoghton*, 15 Beav. 299.

<sup>3</sup> See *per* Lord Eldon, *Huguenin v. Baseley*, 14 Ves. 300.

<sup>4</sup> *Per* the Master of the Rolls, *Hoghton v. Hoghton*, 15 Beav. 299.

<sup>5</sup> *Per* Lord Cottenham, *Dent v. Bennett*, 4 Myl. and C. 276.



the death of the patient, the court, upon a suit by the executor of such patient, made a decree to restrain the medical attendant from proceeding in an action at law upon the agreement, and ordered him to deliver it up to be cancelled, being satisfied that the patient never did agree to, or intend to direct what in the agreement he was represented as agreeing to and directing, and that his signature, if genuine, must have been obtained by fraud, or under such circumstances as rendered it the duty of a court of equity to protect the patient and his estate from being prejudiced by it.<sup>1</sup>

In the same case, it was decided that the relation of medical attendant and patient does not cease because the patient has not medicine actually administered to him at the time, any more than the relation of attorney and client ceases because no suit may be actually in progress.<sup>2</sup>

Where a patient, upwards of eighty years of age, who had risen from humble circumstances, conveyed, by deed of gift, an estate of the value of £1,000 to his medical attendant, who was also his intimate friend, and the son of his former master and benefactor, and to whom he had rendered assistance in his early life, the deed was set aside for fraud. The principal circumstance adduced in proof of fraud was that the deed stated, contrary to the truth, a money consideration, the fact being that the patient, before the execution of the deed, handed to the medical attendant £1,000 for the purpose of having that sum redelivered to him on the occasion of its execution, in the form of payment of the alleged consideration money; but it was also proved that the patient was of a hard, close, and thrifty disposition, and the court considered it unlikely that he would have made a gift of such value, even under the circumstances of the case. In this case, however, the defendant (the medical man) was relieved of a portion of the costs of the suit.<sup>3</sup>

In *Popham v. Brooke*,<sup>4</sup> a patient executed instruments whereby he secured to the defendant, his surgeon, an annuity of £100 during the life of the defendant, in consideration that the defendant would live with him, and give him the benefit of his

<sup>1</sup> *Dent v. Bennett*, 4 Myl. & C. 269; *s. v. Leslie v. Verschoyle*, Beat. 535, where a bond, given to a barrister for past and future professional services, was sustained.

<sup>2</sup> 4 Myl. & C. 277. See also *Ahearne v. Hogan*, Dru. 323.

<sup>3</sup> *Gibson v. Russell*, 2 Y. & Coll. C. C. 104.

<sup>4</sup> 5 Russ. 8.

professional assistance during his life. Four days before the execution of these instruments, the defendant had called in an eminent physician to visit the patient, who stated to the defendant his opinion that the patient could not recover, nor live long, and a witness in the case proved that, about the same time, the defendant expressed to him his belief that the patient could not live more than a month or six weeks. It was held, that even if it were admitted that the patient was of capacity to understand, and did perfectly understand, the nature and effect of the instruments, they could not be maintained.

Where, however, a patient eighty years of age, and subject to frequent attacks of the gout, executed a voluntary deed in favour of a person who had attended him for a long time as his surgeon, and had been in the habit of receiving dividends for him at the bank, and where the evidence of the attorney who drew the deed, and who had before acted as the attorney of the grantor, established the intervention of a third person, and the free-will of the grantor, and that he perfectly understood the difference between a deed and a will, with respect to the disposition of his property, and anxiously preferred the deed, in order that the legacy duty might be saved, the court refused to set aside the deed.<sup>1</sup>

In *Peacock v. Kernot*,<sup>2</sup> the plaintiff, a young man of nervous temperament, arising from habits of intoxication, and naturally of weak intellect, placed himself under the care of the defendant, who kept a druggist's shop, and described himself as an M.D. and surgeon dentist (being a member of the College of Surgeons, but not a regular physician<sup>3</sup>) for the purpose of studying for a German diploma. The defendant induced the plaintiff to purchase the stock-in-trade, lease of the house, &c., at an exorbitant price, but made no mention in the agreement as to the goodwill of the business, and omitted to call in a proper person to value the stock. The plaintiff, who had no friend to advise with him as to the step he was taking, signed a warrant of attorney, and transferred a sum of stock into the name of the defendant, as a consideration for such stock-in-trade, &c. It was held that the agreement must be set aside, and the stock and dividends (against the sale of which an injunction had been granted) re-transferred into the name of the plaintiff.

<sup>1</sup> *Pratt v. Barker*, 1 Sim. 1; 4 L. J. Cha. 149.

<sup>2</sup> 8 L. T. 292.

<sup>3</sup> Anno 1846.

Where an aged captain in the navy gave a bill for £262 10s. to a dentist, purporting to be, generally, for value received, the consideration, according to the evidence of the latter, being that the dentist should, during the captain's whole life, attend to his teeth and supply him with new teeth, and where such bill was said to have been given in the dentist's house without the presence of a third person, and the body thereof was in the handwriting of the dentist, the captain having died before the bill became due, it was held that his executors were entitled to have the bill delivered up.<sup>1</sup> So, where a medical attendant took from a poor patient a promissory note for £325, without any account having been rendered, at a time when the patient's position in life was about to be changed, and where such amount was proved to be beyond what was due for his attendance, upon the most extraordinary scale of charges, the court granted relief, on the ground that an abuse of confidence had been proved, but secured to the medical attendant the sum justly due to him.<sup>2</sup> In such a case, if it be sought to sustain such a benefit, on the ground that the patient intended to be liberal, it must be clearly shown that it was his intention to be liberal; but intention imports knowledge, and liberality imports an absence of influence, and the onus of establishing the gift, by proof, rests upon the party who has received it.<sup>3</sup>

Where the keeper of a house for the reception of lunatics obtained a deed of conveyance in his favour from a person who had been a patient in the house for many years, but who, at the time of the transaction, had recovered, and was resident in the house, not as a patient, but as a boarder, from choice, and had openly expressed a wish to remunerate the keeper for the kindness with which he had been treated, the deed was set aside as fraudulent and void.<sup>4</sup>

A strong case must be made out to set aside a will, on the ground of undue influence, nor is it sufficient to prove mere influence, but there must be such a degree of influence as deprives the testator of being the proper master of his faculties.<sup>5</sup> In

<sup>1</sup> *Allen v. Davis*, 4 De G. and Sm. 133.

<sup>2</sup> *Billage v. Southee*, 9 Hare, 534.

<sup>3</sup> *S. C.* 9 Hare, 540.

<sup>4</sup> *Wright v. Proud*, 13 Ves. 136.

<sup>5</sup> See *Middleton v. Sherburne*, 4 Y. and Coll. 358, a case of a will made under the influence of superstitious terrors, aroused by the spiritual adviser of the testator. See also *Shelford on Lunatics*, c 7



*Farlar v. Lane*,<sup>1</sup> a will, by a patient in favour of her medical attendant, was disputed, on the ground that the testatrix, though not imbecile, was inferior in capacity to the generality of women of her age, and was easily persuaded to anything by trifling promises or presents, like a child. The evidence proved that though she was not of a cultivated understanding, yet she was fully competent to manage ordinary business, and able to understand the value of a will, and that, in giving instructions for the will, and in executing the same, she was carrying her own intentions into effect. It was also proved that the medical attendant had stood to her in the relation of an accepted suitor, and that that state of things had ceased in consequence of conduct on the part of her father, of which she complained very much. The will was pronounced valid, as being the true and voluntary act of a capable testatrix.

In *Major v. Knight*,<sup>2</sup> however, a codicil to the will of an aged female of sound mind, made to exclude an executor, who had misconducted himself, and in favour of the other executor, a stranger in blood, who was her medical attendant, and manager of her affairs, was, under the circumstances of the case, excluded from probate. In *Durnell v. Corfield*,<sup>3</sup> a codicil to the will of a testator, aged 56, drawn up, nine days before his death, by his medical attendant, who was appointed therein executor and residuary legatee, was excluded from probate, the court not being satisfied that the deceased knew of its contents, and approved of it. Where a physician drew up a will, wherein he was appointed residuary legatee, for a female patient of undoubted capacity, but suffering under a complication of disorders, which terminated her life within six days, the court held that the words constituting the residuary clause were not entitled to probate, the evidence not being sufficiently clear that the bequest was contained in the will at the time of its execution, and that the testatrix knew that it was so. It was proved, in this case, that the testatrix had often spoken of her relations as if she hated them, and declared that they should not have her money, but that her physician should have, at her death, all she possessed. Dr. Lushington, in delivering judgment, said, "There can be but little doubt that the appellant (the physician) has failed to derive from the testatrix's will benefits which, of

<sup>1</sup> 29 L. T. 2.

<sup>2</sup> 4 N. C. 661.

<sup>3</sup> 1 Robert. 51; 3 L. T. 323.



some kind, and of some amount, she really intended him to take. But he has nobody but himself to blame. If a physician, after a long attendance on a patient, thinks fit, when she is almost upon her death bed, to prepare and procure the execution of a will, by which he becomes the principal object of her bounty, to the exclusion of her near relations, and to do this without the intervention of any solicitor, or other person competent to give her advice, and to guard her against undue influence, the interests of the public require that his conduct should be regarded by courts of justice with the utmost jealousy."<sup>1</sup>

In a case, however, where a testatrix, 86 years of age, of impaired mind, and having no near relatives, gave, by her will, to her medical attendant, who was a stranger to her in blood, but in whose house she resided, the bulk of her property, appointing him sole executor and residuary legatee, the will was admitted to proof, although it was executed in his house, and prepared by his attorney, and at variance with her previous testamentary dispositions, which were in favour of her distant relatives. In this case, also, it was laid down that, to invalidate a will, on the ground of undue influence, it must be shown that it was practised with respect to the will itself, or so contemporaneously with the will, or connected with it as, by almost necessary presumption, to affect it, and that flattery and obsequiousness, however degrading, would not constitute such an undue influence as would affect the acts of a capable testatrix.<sup>2</sup> In a case where the will of an aged and infirm woman was signed, in the presence of witnesses, but drawn up by her nephew, who was also her medical attendant, and who took by such will the whole of her property, save £100 given to his sister, it was held that the will was entitled to probate, and that the party opposing it was not entitled to costs.<sup>3</sup>

There is nothing in the relation of medical attendant and patient which can prevent the one from entering into a contract with the other, but while such a relation continues, the court will look upon a contract entered into without the intervention of a third party, with considerable jealousy. A man who happens to be an eminent physician, and is therefore called upon to attend a number of persons, is not consequently precluded from entering into a contract

<sup>1</sup> *Greville v. Tylee*, 7 Moo. P. C. 320.

<sup>2</sup> *Jones v Godrich*, 5 Moo. P. C. 16.

<sup>3</sup> *Reece v Pressey*, 2 Jur., N. S., 380.

with any such person, such as the purchase of a house, for instance, from any of his numerous patients, for, in such a case, the contract proceeds openly and fairly, and the relation of physician and patient has, in reality, no bearing upon it; but the case is far different when the relation is continued down to the time of the contract, and where the contract, in point of fact, arises out of such relation.<sup>1</sup> Where a medical man obtained from his patient an assignment of two policies of assurance for the sums of £100 and £50, respectively, and where the deed was expressed to have been made in consideration of the sum of £20, wherein the patient was indebted to the doctor for various professional services rendered, from time to time, for several years past, and in satisfaction of the amount of which the policies were declared to be taken; on the death of the patient, his widow, who thereupon became his personal representative, refused to concur in giving to the insurance company the necessary receipt. The doctor thereupon filed a bill in Chancery to compel the widow to give a proper receipt and discharge to the company, and, in order to support the payment of the consideration stated in the deed, offered evidence to prove that £11 was in fact paid by him to the patient, at the time of the execution of the deed, and that the residue £9 was due for past services as a physician. The court rejected the evidence, and dismissed the bill, with costs.<sup>2</sup>

*Sec. VIII.—Regulations respecting the Sale of Poisons.*<sup>3</sup>

*I. Who may Sell Poisons.*

1. No person may sell, or keep open shop for retailing, dispensing, or compounding poisons, unless he be a pharmaceutical chemist, or a chemist and druggist, and duly registered,<sup>4</sup> under a penalty of £5. Such person must also conform to any regulations made from time to time by the Pharmaceutical Society, with the assent of the Privy Council, under a like penalty.<sup>5</sup>

<sup>1</sup> See judgment in *Ahearne v. Hogan*, Dru. 322.

<sup>2</sup> *Ahearne v. Hogan*, Dru. 310.

<sup>3</sup> The following regulations do not apply to Ireland, but very similar provisions have been recently enacted with respect to the sale of poisons in that country. See 33 & 34 Vict. c. 26.

<sup>4</sup> See *ante*, chap. iv.—“Registration of pharmaceutical chemists, and chemists and druggists,”—p. 96.

<sup>5</sup> 31 & 32 Vict. c. 121, ss. 1, 15.

2. The above-mentioned regulation does not apply to any person registered as a legally qualified medical practitioner before August 11th, 1869, nor to any person registered as such since that date, who has passed an examination in pharmacy in order to obtain his diploma; nor to a legally qualified apothecary; nor to a maker or dealer in patent medicines; nor to a wholesale dealer supplying poisons in the ordinary course of his wholesale dealing; nor does it prevent a veterinary surgeon from dispensing medicines for animals under his care.<sup>1</sup>

## II. *Articles Deemed Poisons.*

### *Part I.*

Arsenic, and its preparations.

Prussic acid.

Cyanides of potassium, and all metallic cyanides.

Strychnine, and all poisonous vegetable alkaloids and their salts.

Aconite, and its preparations.

Emetic tartar.

Corrosive sublimate.

Cantharides.

Savin, and its oil.

Ergot of rye, and its preparations.

Preparations of prussic acid.<sup>2</sup>

Preparations of cyanide of potassium, and of all metallic cyanides.<sup>2</sup>

Preparations of strychnine.<sup>2</sup>

Preparations of atropine.<sup>2</sup>

### *Part II.*

Oxalic acid.

Chloroform.

Belladonna, and its preparations.

Essential oil of almonds, unless deprived of its prussic acid.

Opium, and all preparations of opium or of poppies.

Preparations of corrosive sublimate.<sup>2</sup>

Preparations of morphine.<sup>2</sup>

Red oxide of mercury (commonly known as red precipitate of mercury.<sup>2</sup>)

<sup>1</sup> 31 & 32 Vict. c. 121, s. 16, and 32 & 33 Vict. c. 117, s. 1.

<sup>2</sup> These articles were added, in December, 1869, to those specified in the Act, by resolution of the Pharmaceutical Society, with the approval of the Privy Council. See the regulation immediately following.

Ammoniated mercury (commonly known as white precipitate of mercury.)<sup>1</sup>

Every compound containing any of the above-named poisons, when prepared or sold for the destruction of vermin.<sup>1</sup>

The tincture, and all vesicating liquid preparations of cantharides.<sup>1</sup>

The Pharmaceutical Society may also from time to time, by resolution, declare that any article ought to be deemed a poison, and if the approval of the Privy Council be obtained, and the resolution and approval advertised in the *London Gazette*, such article will be deemed a poison, at the expiration of one month, and should be added to the above list.<sup>2</sup>

### III. *Regulations as to the Sale of Poisons.*

1. It is unlawful to sell any poison, either by wholesale or by retail, unless the box, bottle, vessel, wrapper, or cover in which such poison is contained be distinctly labelled with the name of the article, the word "poison," and the name and address of the seller.<sup>3</sup>

2. It is unlawful to sell any poison included in Part I. of the above list to any person unknown to the seller, unless introduced by some person known to the seller, and upon every sale of any such article, the seller must, before delivery, cause the following particulars to be entered in a book kept according to the following form.<sup>4</sup>

Date.	Name and address of purchaser.	Name and quantity of poison sold.	Purpose for which it is required.	Signature of purchaser.	Signature of person introducing purchaser.*

\* Not necessary, if purchaser be known to seller.

3. Any person selling poison contrary to the above regulations is liable to a penalty not exceeding £5 for the first offence, and not exceeding £10 for the second, or any one subsequent offence.<sup>5</sup>

<sup>1</sup> These articles were added, in December, 1869, to those specified in the Act, by resolution of the Pharmaceutical Society, with the approval of the Privy Council. See the regulation immediately following.

<sup>2</sup> 31 & 32 Vict. c. 121, s. 2, & Sch. (A).

<sup>3</sup> *Ib.* s. 17.

<sup>4</sup> 31 & 32 Vict. c. 121, s. 17, & Sch. (F); 32 & 33 Vict. c. 117, s. 5.

<sup>5</sup> 31 & 32 Vict. c. 121, s. 17.



4. The person on whose behalf any sale is made, by any apprentice or servant, is deemed to be the seller.<sup>1</sup>

5. None of the above regulations apply to any medicine supplied by a legally qualified medical practitioner to his patient, or dispensed by any person registered as a pharmaceutical chemist, or as a chemist and druggist, provided such medicine be distinctly labelled with the name and address of the seller, and the ingredients thereof be entered, with the name of the person to whom it is sold or delivered, in a book, to be kept by the seller for that purpose.<sup>2</sup>

6. In the case of articles exported from Great Britain by wholesale dealers, and in the case of sales by wholesale to retail dealers, in the ordinary course of wholesale dealing, the label need not contain the name and address of the seller, nor need the purchaser be either known to the seller, or introduced by a person known to the seller, nor need the seller keep any particular form of book, or cause any entries to be made, before delivery.<sup>3</sup>

<sup>1</sup> 31 & 32 Vict. c. 121, s. 17.

<sup>2</sup> *Id.* s. 17, and 32 & 33 Vict. c. 117, s. 3. A duly registered chemist was convicted, under 31 & 32 Vict. c. 121, s. 17, for selling poison to a person unknown to him. It was proved that J., who was unknown to the chemist, came into his shop and produced a prescription written in the abbreviated form usual among chemists. At the foot of it were the initials R. M. L., and the words Mrs. Newton, Aug. 11, 1869. There was a legally qualified medical practitioner having the initials R. M. L. The chemist's assistant dispensed the prescription by putting a small quantity of prussic acid into a bottle and filling up the bottle with rose-water, according to the meaning of the prescription. The chemist made an entry in his prescription-book, "Newton, Mrs. (copying the prescription), Aug. 11, R. M. L." He also indexed the entry by inserting the name "Newton," and the page in the index contained in the book. The bottle was labelled with the name and address of the chemist, but not with the word "poison." The prescription was one which might be ordered for a lotion. No evidence was given whether there was such a person as Mrs. Newton, or not. The chemist was also convicted, in respect of the same sale, for selling poison in a bottle not labelled with the word "poison." On an appeal to the Court of Queen's Bench, it was held, first, that, assuming that the chemist *bonâ fide* believed that he was dispensing a prescription given by a medical man to Mrs. Newton, he could not be convicted for selling poison to a person unknown to him, but must be taken to have dispensed a medicine according to the requirements of the proviso to s. 17. Secondly, it was held that he could not be twice convicted, under the same section, in respect of the same sale. *Berry v. Henderson*, L. R. 5 Q. B. 296; 39 L. J., M. C. 77; 22 L. T., N. S., 331.

<sup>3</sup> 31 & 32 Vict. c. 121, s. 17.

IV. *Further Restrictions as to the Sale of Arsenic.*<sup>1</sup>

1. On every sale of arsenic, including arsenious acid and the arsenites, arsenic acid and the arseniates, and all other colourless poisonous preparations of arsenic, the seller must, forthwith, and before delivery thereof to the purchaser, cause the following particulars to be entered in a book kept according to the following form.

Day of Sale.	Name and surname of Purchaser.	Purchaser's place of abode.	Condition or occupation.	Quantity of arsenic sold.	Purpose for which required.

Purchaser's signature.<sup>2</sup>

Seller's signature.

[Witness's signature and address.<sup>3</sup>]

All inquiries necessary for the above entries must be made of the purchaser, before delivery of the arsenic.<sup>4</sup>

2. A witness to the sale is required, if the purchaser be unknown to the seller. The witness must be known to both seller and purchaser, and the sale must be made in his presence. He must also sign his name and address, as above, before delivery of the arsenic.<sup>5</sup>

3. No arsenic may be sold to a person who is not of full age.<sup>6</sup>

4. No arsenic may be sold unless, before the sale, it be mixed with soot or indigo, in the proportion of 1 oz. of soot, or  $\frac{1}{2}$  oz. of indigo, at the least, to each pound of arsenic; but if the purchaser state that the arsenic is required not for use in agriculture, but for some other purpose for which such admixture would, according to his representation, render it unfit, such arsenic may be sold without such admixture, in a quantity of not less than 10 lbs. at any one time.<sup>7</sup>

5. These restrictions do not apply to the sale of arsenic, when the same forms part of the ingredients of any medicine, required to be made up or compounded according to the prescription of a

<sup>1</sup> See 14 & 15 Vict. c. 13; 31 & 32 Vict. c. 121, s. 17.

<sup>2</sup> If the purchaser cannot write, the seller must here enter the words "cannot write."

<sup>3</sup> See *post*, par. 2.

<sup>4</sup> 14 & 15 Vict. c. 13, ss. 1 & 2, and Sch.

<sup>5</sup> *Ib.* s. 2.

<sup>6</sup> *Ib.* s. 2.

<sup>7</sup> *Ib.* s. 3.

qualified and registered medical practitioner, or a member of the medical profession, or to the sale of arsenic by wholesale to retail dealers, upon orders in writing, in the ordinary course of wholesale dealing.<sup>1</sup>

6. A penalty not exceeding £20 may be inflicted upon any person selling arsenic, without making the necessary entries, and obtaining the necessary signatures, or upon any purchaser giving false information, in answer to the inquiries necessary for such entries, or upon a person signing his name as witness to a person unknown to him.<sup>2</sup>

<sup>1</sup> 14 & 15 Vict. c. 13, s. 5.

<sup>2</sup> *Ib.* s. 4.

## CHAPTER VIII.

### THE LAW AFFECTING MEDICAL MEN IN THEIR RELATION WITH THEIR PARTNERS, APPRENTICES, AND ASSISTANTS.

#### *Sec. I.—Apprentices and Assistants.*<sup>1</sup>

##### I. *The General Law.*

The relations of medical men to their apprentices, assistants, pupils, dispensers, &c., are, as a rule, regulated by the ordinary law of "master and servant," but in all such engagements, the *custom* of the profession, unless excluded expressly or by implication, is admissible in evidence, to explain or annex incidents to the contract,<sup>2</sup> as, for instance, to prove that it is liable to be put an end to by notice.<sup>3</sup>

##### II. *The Parties to the Contract.*

Every person of full age may become either a master, apprentice, or assistant, provided he be *sui juris*.<sup>4</sup> An infant may make a binding contract of apprenticeship, provided he execute the same,<sup>5</sup> but the father or next friend should join, and, in such case, any action for breach of the contract on the part of the infant should be brought against the father or next friend.<sup>6</sup>

An infant may also make a binding contract of service, and acquire thereby a right of action for wages earned,<sup>7</sup> for which, if they do not amount to more than £50, he may sue in the County Court,<sup>8</sup> or in the Sheriffs' Court,<sup>9</sup> as if he were of full age.

<sup>1</sup> See, generally, Smith's "Law of Master and Servant," 3rd ed. 1870. Chitty on the Law of Apprentices, 1812. Langley's "Via Medica," 3rd ed. 1869.

<sup>2</sup> Hutton v. Warren, 1 M. & W. 475.

<sup>3</sup> Parker v. Ibbetson, 4 C. B., N. S., 346.

<sup>4</sup> R. v. Hindringham, 6 T. R. 557.

<sup>5</sup> R. v. St. Petrox, 4 T. R. 196.

<sup>6</sup> Branch v. Ewington, 2 Doug. 518.

<sup>7</sup> R. v. Chillesford, 4 B. & C. 94.

<sup>8</sup> 9 & 10 Vict. c. 95, s. 64; 13 & 14 Vict. c. 61; see also *post*, p. 333.

<sup>9</sup> 15 & 16 Vict. c. lxxvii., s. 46.



If no provisions on the subject be inserted in the deed of partnership, each partner in a firm will have authority to hire and discharge assistants, and one partner will have power to order an assistant to remain who has received a notice of discharge from the other partner, and in such a case, the partner who gave the notice will not be justified in turning such assistant out, at the expiration of such notice.<sup>1</sup>

No person, keeping an open shop for the sale or compounding of poisons, may engage an apprentice or assistant who is not registered under the Pharmacy Acts.<sup>2</sup>

No person may act as assistant to an apothecary, in compounding and dispensing medicines, without first obtaining from the Apothecaries' Company a certificate to the effect that he has passed the necessary examination. The Company have power to enforce a penalty of £5 for every infringement of this rule.<sup>3</sup>

London surgeons were formerly restrained, by a by-law of their Company, from taking any apprentice who had not a competent knowledge of the Latin tongue. The validity of this rule was upheld in *R. v. The Master and Wardens of the Company of Surgeons*.<sup>4</sup> It seems, however, never to have been very strictly regarded.

### III. *The Contract.*

The contract may either be made by word of mouth, or may be expressed in writing, but if the agreement be not to be performed within a year from the making thereof, such agreement, or some memorandum thereof, as, for instance, an acknowledgment,<sup>5</sup> must be in writing, and signed by the party to be charged therewith,<sup>6</sup> or the contract will be for all purposes void.<sup>7</sup> This does not apply to a contract to serve for an indefinite period, subject to be ended by reasonable notice, although the period of service may extend beyond the year.<sup>8</sup>

In every such written contract, the consideration, or remuneration

<sup>1</sup> *Donaldson v. Williams*, 1 Cr. and M. 345.

<sup>2</sup> See 15 & 16 Vict. c. 56; 31 & 32 Vict. c. 121; 32 & 33 Vict. c. 117; and *ante*, c. 4, p. 96.

<sup>3</sup> 55 Geo. III. c. 194, s. 20. This does not apply to those who were acting as assistants to apothecaries, before August 1st, 1815.

<sup>4</sup> 2 Burr. 892.

<sup>5</sup> *Roberts v. Tucker*, 3 Ex. 632.

<sup>6</sup> 29 Car. 2 c. 3. s. 4.

<sup>7</sup> *Carrington v. Roots*, 2 M. & W. 248.

<sup>8</sup> *Souch v. Strawbridge*, 2 C. B. 815.

to be received by the person who agrees to serve, must appear, either expressly, or by implication. The adequacy of the consideration is immaterial, but if it be illegal, the whole agreement is null and void.

In *Prole v. Wiggins*,<sup>1</sup> an action of debt was brought by the administrators of a deceased medical practitioner, on a money bond, and the defendant pleaded "*non est factum*," and that the bond was given in pursuance of a corrupt agreement that the defendant should serve the obligee, as an apprentice to the business of a surgeon, apothecary, and man-midwife, for two years, and that the agreement should be antedated, for the purpose of making an apprenticeship of two years seem to be one of five years, and of thereby evading the Apothecaries' Act (55 Geo. III. c. 194, s. 15), which requires an apprenticeship of five years. Upon a verdict for the plaintiff, on the first plea, and for the defendant, on the plea setting out the fraudulent agreement, the court refused to enter a verdict for the plaintiff "*non obstante veredicto*," and also refused to order the verdict to be entered for the defendant, without costs, under 3 & 4 Will. IV. c. 42, s. 31, as the affidavit on which the motion was made did not negative, on the part of the plaintiff, knowledge of the fraud.

If the master is to be paid for the board and lodging, or teaching, of the apprentice or assistant, this should be expressed, or there must, at any rate, be such an agreement or understanding to that effect as will satisfy a jury.

C. placed his son with A., a chemist and druggist, who intended to pass the examination at Apothecaries' Hall, but was delayed in so doing, by ill-health. It was intended that C.'s son should be apprenticed to A., but he stayed for five years with A., having his board and lodging, and being taught the business of a chemist and druggist, and then left A., and was never apprenticed to him. A., thereupon, brought an action against C., to recover charges for the board and lodging, and teaching of C.'s son, during the five years. The jury were told that, before they could give a verdict for the plaintiff, they must be satisfied that C.'s son was placed with A. upon an agreement or understanding that A. was to be paid for his board and lodging, and for teaching him, but that if they were not so satisfied, or if they thought that C.'s son was not to be paid

<sup>1</sup> 3 Bing. N. C. 230; 3 Sc. 601; 6 L. J., N. S., C. P. 2.

for until A. had passed his examination at Apothecaries' Hall, and that C.'s son was then to be apprenticed to A., as an apothecary, that the plaintiff was not entitled to recover anything. The jury returned a verdict for the defendant.<sup>1</sup>

Every writing relating to the service or tuition of an apprentice or assistant placed with a master to learn a profession or business, will be deemed an instrument of apprenticeship, and the premium or consideration to be paid to the master must be set out therein, in writing. If no such instrument be made, or if such premium or consideration be not set forth therein, the master, and also the apprentice, if of full age, and any other person being a party to the contract, will be liable to a penalty of £20, and the contract, and the instrument (if any) will be null and void.<sup>2</sup>

The agreement must also bear the proper stamp. An agreement made with an assistant requires a sixpenny stamp, which may be denoted by an adhesive stamp, to be cancelled by the person by whom the agreement is first signed.<sup>3</sup> An instrument of apprenticeship requires a 2s. 6d. stamp, if there be no premium or consideration, and in any other case, stamps to the amount of 5s. for every £5, and also for any fractional part of £5, of the amount or value of the premium or consideration, must be affixed.<sup>4</sup>

Where a surgeon and apothecary agreed to take an apprentice, in consideration of a premium, and the apprentice remained with him seven months, and then broke off the agreement, on the refusal of the former to pay for the expense of the stamp, it was held that the master could not recover damages for breach of agreement, nor even for the board and lodging of the apprentice.<sup>5</sup>

No particular words are required to create the relations of master and apprentice, or master and assistant, but the intention of the parties will be considered, in each case.<sup>6</sup>

In engagements of service in the medical profession, the custom in the profession to determine the contract by notice is considered as incorporated with the contract, unless excluded expressly, or by implication.<sup>7</sup>

<sup>1</sup> *Attwaters v. Courtney*, Car. & M. 51. See also *Earratt v. Burghart*, 3 C. & P. 381.

<sup>2</sup> 33 & 34 Vict. c. 97. ss. 39 and 40.

<sup>3</sup> *Ib.* Sch., and ss. 24 and 36.

<sup>4</sup> *Ib.* Sch.

<sup>5</sup> *Keene v. Parsons*, 2 Stark. 506.

<sup>6</sup> *R. v. King's Lynn*, 6 B. & C. 99.

<sup>7</sup> *Metzner v. Bolton*, 9 Ex. 518; *Parker v. Ibbetson*, 4 C. B., N. S., 346.



Where the contract does not specify what notice shall be given, the following customs prevail in the profession :<sup>1</sup>—

1. In the case of a permanent assistant, engaged nominally for the year, where the salary is paid weekly, the custom is to give and require a month's notice.

2. An in-door assistant, or an out-door assistant living in lodgings, or in a house furnished and provided by the master, may be dismissed, at any time, by a month's notice, or on the payment of a month's salary.

3. An out-door assistant, living in lodgings, or in a house furnished and provided by himself, by the wish, or with the consent of the master, may be dismissed, at any time, by a three months' notice, or on payment of an equivalent salary.

4. Where an out-door assistant, at the suggestion of the master, takes an unfurnished house, upon a yearly tenancy, terminable by a quarter's notice, at any quarter day, and furnishes such house himself, it is customary for the master to give a three months' notice, terminating on the next ensuing quarter day.

5. Where the master provides the house or rooms for an out-door assistant, and the assistant provides the furniture, it is usual to give a three months' notice.

6. In temporary engagements, such as those made with a "*locum tenens*," it is customary to pay by the week, and the master may terminate the contract at any time, but the assistant is expected to give the master reasonable time to provide a successor.

Where an assistant is to be remunerated by a portion of the profits, and not by a fixed salary, he is not necessarily, on that account, constituted a partner, as between the parties themselves.<sup>2</sup> As regards third persons, he is considered a partner if he be paid by a share of the net profits, but not if he be paid by a share of the gross earnings, or by a sum of money calculated with reference to profits.<sup>3</sup>

Where no time is expressed, the engagement is considered a yearly hiring, and cannot be terminated before the end of the year.<sup>4</sup>

Where there is a contract of engagement for a year, the continuation of the service at the expiration of the year, without

<sup>1</sup> See "*Via Medica*," which is my authority for these customs.

<sup>2</sup> See *Peacock v. Peacock*, 2 Camp. 44.

<sup>3</sup> See *Dry v. Boswell*, 1 Camp. 329.

<sup>4</sup> *Fawcett v. Cash*, 5 B. & Ad. 904.



further agreement expressly made, is evidence of a new contract for a year, upon the same terms.<sup>1</sup>

In agreements made between medical men and their apprentices or assistants, the apprentice or assistant usually stipulates that he will not, after the expiration of his time of service, exercise his profession within a certain distance from the place where the master is established.<sup>2</sup>

#### IV. *Rights and Liabilities of the Master.*

A master who has been deprived of the services of his apprentice or assistant by a third person, who either entices him away, or harbours him, after being apprized of the former contract, may maintain an action for loss of service against such third person. He may also maintain an action for loss of service against any one who does any personal injury to his apprentice or assistant.<sup>3</sup>

When a legal contract of hiring and service has been completed, the master must receive the assistant into his service, and retain him during the whole time he has contracted so to do, and if he refuse to receive such assistant, or dismiss him without lawful cause, he will be liable to an action for breach of contract.<sup>4</sup> He will also, of course, be liable to a similar action, if he break any of the covenants contained in the indentures or agreement made with an apprentice or assistant.

In a case where A., a licentiate apothecary, covenanted to instruct B. in his art and mystery as an apothecary, in the best ways and means he could, and, at the time of the execution of the indenture of apprenticeship, was keeping an open shop for the compounding of the prescriptions of other medical practitioners, as well as his own, but afterwards closed the shop to the public, and used it merely for the purpose of compounding medicines for his own practice, and ceased to be registered as an apothecary, upon an action by B. for breach of covenant, it was held that A. had not, by the above-mentioned acts, become disqualified from teaching B., pursuant to his covenant, so as to entitle the latter to a direction that A. had broken the covenant.<sup>5</sup>

<sup>1</sup> *Beeston v. Collyer*, 4 Bing. 309.

<sup>2</sup> See *post*, s. 3, p. 344.

<sup>3</sup> *R. v. Daniell*, 6 Mod. 99.

<sup>4</sup> *Bracegirdle v. Heald*, 1 B. & Ald. 722.

<sup>5</sup> *Batty v. Monks*, 15 Ir. C. Law Rep., N.S., 388, C. P.

Where a master is sued by an assistant, for wrongful dismissal, justification must be specially pleaded.<sup>1</sup>

A master is not bound to pay any wages to an apprentice or assistant, unless he has contracted to do so, either expressly, or by implication,<sup>2</sup> nor, except under similar circumstances, is he compelled to give additional remuneration for increased labour.<sup>3</sup>

A master is bound to provide medical attendance for an apprentice, but not for an assistant.<sup>4</sup>

A master is bound to indemnify an apprentice or assistant from the consequences of all lawful acts done at his command, in pursuance of orders which the apprentice or assistant was bound to obey.

A master is liable on contracts entered into by his apprentice or assistant, when he has authorized him to enter into any such contract, either expressly, or by implication. Thus, for instance, where an assistant usually orders drugs from a wholesale house, on credit, and the master usually pays, the master will be held liable to pay for any goods of a similar nature which the assistant may obtain upon credit; and this liability remains even after the assistant has been discharged, unless the party giving credit be made aware of the fact.<sup>5</sup> Even if the contract be made in the assistant's name, the same liability will continue to attach to the master.<sup>6</sup>

As a general rule, entries made by a deceased assistant or apprentice, in the usual course of business, are evidence, after his decease, of the facts stated in such entry.

An assistant is regarded as the general agent of his master, for all purposes within the scope of his employment.

A master is not criminally responsible for the acts of his apprentice or assistant, unless he expressly command, or personally co-operate in them. Thus, if a patient's death be caused by the negligence of an assistant added to the negligence of a master, the master cannot be convicted of manslaughter.<sup>7</sup>

A master is, however, as a rule, liable to a civil suit for the wrongful acts of his assistant, unless they be beyond the ordinary

<sup>1</sup> *Speck v. Phillips*, 5 M. & W. 279.

<sup>2</sup> See *Foord v. Morley*, 1 F. & F. 496; *R. v. Shinfield*, 14 East, 541.

<sup>3</sup> *Bell v. Drummond*, 1 Peake, 63.

<sup>4</sup> *R. v. Smith*, 8 C. & P. 153.

<sup>5</sup> *Nickson v. Brohan*, 10 Mod. 109.

<sup>6</sup> *Trueman v. Loder*, 11 A. & E. 594.

<sup>7</sup> *R. v. Bennett*, 29 L. J. M. C. 27.

scope of his employment. Thus, a medical man is responsible for an injury done to a patient through the want of proper skill in his assistant. In such an action, however, the plaintiff must prove that the injury was produced by such want of skill, and it is not to be inferred.

Where a person went into a surgeon's shop, in which were two apprentices, and asked to be bled, saying he had found relief from it before, but did not consult anyone there as to the propriety of performing the operation, and was thereupon bled by the senior apprentice, in the presence of the other, the bleeding taking place in the basilic vein, where, it appeared, from an old cicatrix, that he had been bled before, and where there were no external indications in such person's appearance that bleeding would be improper, it was held that the apprentice was justified in performing the operation, and that the surgeon was not answerable for its not producing a beneficial result; but it was laid down that he was responsible for the act of his apprentice, and, in an action against such surgeon, for negligent and unskilful treatment, the question left for the jury was, whether the defendant had sustained any injury which could be attributed to inexperience, or the want of previous knowledge, on the part of the apprentice.<sup>1</sup>

It is the custom in the medical profession, for a master engaging a permanent assistant, to pay the assistant's travelling expenses one way, and for a master engaging a temporary assistant, or a *locum tenens*, to pay the travelling expenses both ways.<sup>2</sup>

A medical man who enters into an engagement with a *locum tenens*, for a stipulated time, usually pays by the week, and at the termination of the engagement, pays for the week or half-week, where a fresh week has been entered upon.<sup>3</sup>

Where a petitioner for a dissolution of marriage, on the ground of his wife's adultery, alleged that he was a surgeon, that the co-respondent had lived in the same house with him, as his assistant, for two years, and that the adultery was committed "on divers occasions" during that period, the court refused an application of the respondent for further particulars.<sup>4</sup>

<sup>1</sup> *Hancke v. Hooper*, 7 C. & P. 81; and see *ante*, p. 256.

<sup>2</sup> "Via Medica," p. 60.

<sup>3</sup> *Ib.* p. 51.

<sup>4</sup> *Smith v. Smith & Liddard*, *Searle & Smith* 1. See also *Noverre v. Noverre*, 1 Robert. 428.



### V. *Rights and Liabilities of the Apprentice or Assistant.*

An assistant who, after having accepted an engagement, refuses to enter into the service, is liable to an action for breach of contract.<sup>1</sup>

If a third person recover damages against the master, for injuries sustained in consequence of the negligence or misconduct of an apprentice or assistant, such apprentice or assistant will be liable to an action, at the suit of the master, for the loss sustained thereby.

Where an assistant occupies premises belonging to the master, his occupation is, in law, the occupation of his master,<sup>2</sup> and he is not entitled to notice to quit, nor to continue in occupation of the premises when dismissed from his master's service.<sup>3</sup>

The practice of an apprentice, or unqualified assistant to an apothecary, must be confined to his master's house.<sup>4</sup>

In a case where such an apprentice was in the habit of practising at a town nine miles from his master's residence, but *bonâ fide* on his master's account, in cases, in some of which the patients never saw the master, and did not know of his existence, he was held liable to the penalty of £20, under 55 Geo. III. c. 194, s. 20, for practising as an apothecary, without a certificate.<sup>5</sup>

An assistant wrongfully discharged may sue his master for wages unpaid,<sup>6</sup> or may bring a special action against him for breach of contract, and add a count, if necessary, for wages due.<sup>7</sup> No action will lie against a master for a gratuity promised at the end of the year, or on the expiration of the period of service.

An assistant, when he enters into an engagement with a medical man, undertakes to run all the ordinary risks of the service, such as the danger of attending patients suffering from fever, or small-pox.<sup>8</sup>

Where an assistant has been called to a fatal accident, and afterwards summoned to attend as a witness at the coroner's inquest, it is customary for the master to allow him half the fee.<sup>9</sup>

An assistant is not, as a rule, liable to third persons for money paid to him on account of his master. If he exceed the express

<sup>1</sup> See *Richards v. Hayward*, 2 M. & G. 574, for such an action against a medical practitioner who had accepted an appointment as ship's surgeon, and afterwards refused to go out in such capacity; and see *ante*, p. 132.

<sup>2</sup> *Bertie v. Beaumont*, 16 East, 33.

<sup>3</sup> *Mayhew v. Suttle*, 4 E. & B. 347.

<sup>4</sup> *The Apothecaries' Co. v. Greenwood*, 9 L. J. K. B. 331.

<sup>5</sup> *Ib.* See also *Brown v. Robinson*, 1 C. & P. 264.

<sup>6</sup> *Smith v. Hayward*, 7 A. & E. 544.

<sup>7</sup> *Lilley v. Elwin*, 11 Q. B. 755.

<sup>8</sup> *Hutchinson v. The York, Newcastle, and Berwick Railway Co.*, 5 Ex. 343.

<sup>9</sup> "*Via Medica*," p. 74. See, also, *ante*, p. 278.



or implied authority of his master, he is himself liable to the person with whom he deals in his master's name.<sup>1</sup>

An apprentice or assistant is personally liable for a criminal offence, although performed in obedience to his master's commands, and is liable to indictment for any breach of duty to his master, which involves also a public duty, as, for causing the death of a patient by gross negligence.<sup>2</sup>

An assistant rightfully discharged, has no claim against his master, for wages for the broken period of service.

On the bankruptcy of the master, any assistant in his employ at the date of the order of adjudication is entitled to be paid in full all wages or salary, not exceeding four months' wages or salary, and not exceeding £50, in priority to all other debts of the bankrupt. Such debts rank equally among themselves.<sup>3</sup>

If any assistant be about to sue his master in the County Court, for unpaid wages, he should enter the plaint at the court of the district in which the master carries on business. A medical man carries on business in the district where he visits his patients, although he does not reside in it.<sup>4</sup>

#### VI. *Dissolution of the Contract.*

The contract may be dissolved by discharge, or by the death of the master, or of the servant.

An apprentice, or a pupil with indentures, with whom a premium has been paid, cannot be discharged for misconduct, but the master must seek a remedy by action on the covenants in the indenture.<sup>5</sup>

A master is justified in discharging an assistant for the following causes:<sup>6</sup>—

1. Wilful disobedience of any lawful order.
2. Gross moral misconduct, whether pecuniary or otherwise.
3. Habitual negligence in business, or conduct calculated seriously to injure his master's business.
4. Incompetence, or permanent disability from illness.

Thus, a master may discharge an assistant, without notice, for robbing him, or embezzling his property, or, for attempting to ravish his maid-servant,<sup>7</sup> or for habitual drunkenness,<sup>8</sup> or for claiming to

<sup>1</sup> *Smout v. Ilbery*, 10 M. & W. 1.

<sup>2</sup> See *Tessymond's Case*, 1 Lewin. C. C. 169.      <sup>3</sup> 32 & 33 Vict. c. 71, s. 32.

<sup>4</sup> *Mitchell v. Hender*, 23 L. J. Q. B. 273. See, *ante*, p. 259.

<sup>5</sup> *Wise v. Wilson*, 1 Car. & Kir. 669.

<sup>6</sup> Smith's "Master and Servant," ed. 3, p. 112.

<sup>7</sup> *Atkin v. Acton*, 4 C. & P. 208.      <sup>8</sup> *Speck v. Phillips*, 5 M. & W. 279.

be a partner,<sup>1</sup> and he need not pay such assistant, if rightfully discharged, any wages for the broken period of service.<sup>2</sup>

If a good ground of discharge exist, and be known to the master, it is sufficient to justify the discharge, although he may not insist on that as the precise ground of discharge, or even although he may allege a different ground.<sup>3</sup> In *Wise v. Wilson*,<sup>4</sup> the defendant, a surgeon, had taken into his house the plaintiff, a youth seventeen years old, as "pupil and assistant," for three years, and had received a premium with him. The agreement was written, but not under seal, and the conditions inserted therein were to the effect that the plaintiff should compound and dispense the medicines, keep the books, attend the night bell, and visit patients when required, and should, in return, be provided with board and lodging, allowed to attend certain lectures and classes, and instructed by the defendant in the general practice of medicine. In an action by the plaintiff, for wrongful dismissal, it was proved, by way of justification on the part of the defendant, that the plaintiff was drunk about five times while he was in the defendant's service, and that on some occasions he came in late, and desired the shopboy to make up the medicines, which the shopboy accordingly did, and the plaintiff wrote the labels on them. It was held by Lord Denman, C.J., that the contract was a mixed one, between that of apprenticeship and service, and that the defendant would not be entitled to dismiss the plaintiff simply for coming home intoxicated on some occasions, but that he would be justified in so doing if the plaintiff occasioned real danger to the practice by employing the shopboy to make up the medicines.

If an assistant be dismissed, on the ground of permanent disability from illness, it is customary to pay him two weeks' salary in advance, and to provide him with money to pay the expenses of his journey home.<sup>5</sup>

An assistant is discharged by the death of the master, and a contract of apprenticeship, so far as it was a personal contract, is put an end to by the same cause.<sup>6</sup>

<sup>1</sup> *Amor v. Fearon*, 9 A. & E. 548.

<sup>2</sup> *Cunningham v. Fonblanque*, 6 C. & P. 49.

<sup>3</sup> *Ridgway v. Hungerford Market Co.*, 3 A. & E. 171.

<sup>4</sup> 1 Car. and Kir. 662.

<sup>5</sup> "Via Medica," p. 59.

<sup>6</sup> *R. v. Peck*, 1 Salk. 65. It has lately been held (*Whineup v. Hughes*, L. R., 6 C. P., 78) that in the case of apprenticeship, by deed, containing a covenant to instruct, no portion of the premium is recoverable, if the master die during the term.

If the contract be for an entire year's service and year's pay, the assistant is not legally entitled to any wages for the broken period of service, if the master die during the year.

The representatives of a deceased assistant cannot, as a rule, claim anything for the broken period of service, but it is customary, in such a case, to pay the wages due up to the date of decease.

#### VII. *Characters or Testimonials given to Apprentices or Assistants.*

A master is not legally bound to give any character or testimonial whatever to an assistant whom he has dismissed, or who has left his service, or to an apprentice who has served his time, nor will an action lie against him for refusing to do so.<sup>1</sup>

If a master knowingly give a false character of an assistant to any person about to engage such assistant, and if such assistant afterwards injure his new master in any way, such new master may recover damages against the former master.<sup>2</sup>

Any statement made in writing, or by word of mouth, by a master, to a person making inquiries as to the character or abilities of a former apprentice or assistant, is a privileged communication, nor can any such apprentice or assistant maintain any action against the former master with reference to any such statement, unless it be both false, *and* made with malice. It is not sufficient to prove that such statements were untrue, but malice, in fact, must be also shown.<sup>3</sup>

A master who knowingly and wilfully pretends, or who falsely asserts in writing, that he engaged any person for a period of time, or in any station or capacity other than that for which, or in which he actually did engage such person, is liable to a penalty of £20.<sup>4</sup>

### *Sec. II.—Partnership.*

#### *I.—Formation of the Partnership, and Incidents connected therewith.*<sup>5</sup>

A partnership between medical men is an association of persons standing to one another in the relation of principals, for jointly

<sup>1</sup> *Carrol v. Bird*, 3 Esp. 201.

<sup>2</sup> *Wilkin v. Reed*, 15 C. B. 192.

<sup>3</sup> See *Bromage v. Prosser*, 4 B & C. 254.

<sup>4</sup> 32 Geo. III. c. 56, s. 2.

<sup>5</sup> See Dixon on Partnership, for a concise treatise on the general law of the subject, or, for a more elaborate work, Lindley on Partnership.



carrying out the objects of the profession, with an agreement to share the profits. If the relationship of master and servant exist, there can be no partnership between the parties themselves, whatever may be the manner in which the latter is remunerated, but a servant is sometimes held liable as a partner, as regards third persons.<sup>1</sup>

Neither does a partnership exist where there is no joint interest. Where a surgeon sold, by deed, his practice, drugs, fixtures, and stock-in-trade, for a specified sum, and covenanted that, during the space of one year from the date of the deed, he would continue to reside at the then place of business, and carry on and attend to the said profession and practice, as he had hitherto done, and that he would, to the utmost of his power, introduce the purchaser to his patients, and do every reasonable act for promoting the interests of the concern, and the purchaser covenanted, in consideration thereof, to allow the vendor, during the year, a moiety of the clear profits of the concern, to be paid at the expiration thereof, it was held that this did not constitute a partnership, for that, after the execution of the deed, no interest, either in the business, or the stock-in-trade, remained in the vendor.<sup>2</sup>

No particular form of words is necessary to constitute a partnership, provided that by the contract such a relationship between the parties be established as will fulfil the conditions given in the definition above, nor need the agreement be in writing, if the partnership is to commence immediately, or to continue for a shorter term than one year.

An action will lie for a breach of an agreement to form a partnership, provided that the terms of the agreement be clear and distinct, but specific performance cannot, in general, be enforced in equity, unless the terms of the articles of partnership have been fixed and ascertained, and a definite term for its duration agreed on.

Fraud or misrepresentation, on either side, in entering into the contract will, at the option of the party deceived, vitiate the contract. Thus, where A. and B. entered into partnership as surgeons, B. paying to A. £750 premium, upon the representation that A.'s profits were £700 per annum, and disputes subsequently arose, it being alleged by B. that A.'s profits were not half the amount

<sup>1</sup> *V. ante*, c. 8, s. 1, p. 328.

<sup>2</sup> *Rawlinson v. Clarke*, 15 M. & W. 292.



represented (an allegation which was supported by A.'s income-tax return and other evidence, but not by direct evidence of the actual receipts of A.), a dissolution of the partnership and a return of one-half the premium was decreed, on the ground of the misrepresentation as to the amount of A.'s profits previous to the partnership.<sup>1</sup> A partner, however, who wishes for relief under such circumstances, must not continue to act on the contract, after the discovery of the fraud or misrepresentation.

An agreement to procure a partnership for a medical man, by the assignment of patients by a third person, to whom a premium is to be paid, is not illegal.<sup>2</sup>

## II.—*Duties and Rights of Partners, inter se.*

A question as to "trade secrets" is not likely to arise very often in a partnership between qualified medical practitioners, but in a case where one of the partners was the inventor of a patent medicine, of the secret of making which he was the sole possessor, it was decided that such a secret was a partnership asset or not, according to the intention of the parties themselves.<sup>3</sup>

Where an individual partner acquires an office, or other appointment of a personal nature, the office does not become partnership property, unless by special agreement, although it may have been acquired by means of partnership property, and, during the partnership, the partner holding it may be accountable to the partnership for the profits.

In the absence of evidence to the contrary, the presumption is that the partners are entitled to an equal share of the profits, and where the agreement is only to share the profits, under similar circumstances, the loss must be shared in the same proportion; nor will a claim by one partner for remuneration for personal labour, exceeding that contributed by the other, be allowed, unless under a previous arrangement between the parties.

The representative of a deceased partner is entitled to claim a share of the profits, if the partnership be continued, but he has not, in other respects, the rights of a partner.

Partners are trustees and agents for one another, and bound to the most perfect good faith. Thus, each partner should keep precise account of all partnership dealings, and have such accounts

<sup>1</sup> *Jauncey v. Knowles*, 29 L. J. Cha. 95.

<sup>2</sup> *Edgar v. Blick*, 1 Stark. 464.

<sup>3</sup> *Morison v. Moat*, 9 Hare, 241; 20 L. J. Cha. 513.

ready for inspection. Thus, also, one partner cannot obtain separate advantages for himself by means of his connection with the partnership, but he is not accountable for a free gift made to him exclusively, even though the reason of the gift be some partnership transaction.

One partner may purchase the share of the other, but no partner can exclude another from his share by any act short of a dissolution and winding up of the partnership affairs, and the bankruptcy of one partner will be annulled where it has been brought about merely for the purpose of dissolving the partnership.

Each partner may pay debts out of the partnership funds, receive debts that become due, and bring actions in the joint names, but may not borrow money to meet current liabilities, or draw bills or other negotiable instruments.<sup>1</sup> He may purchase drugs, &c., on the usual credit, and hire necessary servants, upon reasonable terms, and dismiss them.<sup>2</sup> On the bankruptcy of one partner, the solvent partner may pay debts with partnership money, receive debts, and bring actions in the name of himself and the assignees, and the bankrupt partner has no power over the partnership effects.

No partner may transfer his interest to a stranger, so as to constitute him a member of the partnership, without the consent of the other.

One partner cannot bring an action against another for a share of profits, or even for money received on account of the partnership, except when an account has been settled and stated between the partners, so that the amount actually due from one to the other has been ascertained and agreed on; nor, except under similar

<sup>1</sup> Partners in *trade* have authority to bind the firm by drawing or accepting a bill, but this authority is by the custom and law of merchants, and the same reason does not apply to other partnerships. See *per* Ld. Denman, C. J., in *Hedley v. Bainbridge*, 3 Q. B. 316. The above remark does not, therefore, apply to a partnership between chemists and druggists, nor would it, probably, apply to a partnership between apothecaries, inasmuch as apothecaries are classed as traders, in the Bankruptcy Act. See Byles on Bills, ed. 10, p. 45. See also, *ex parte* Crabb, 8 De G. M. & G. 277; 25 L. J. By. 45, where it was held that a surgeon who is also licensed as an apothecary, and supplies medicines to his patients upon his own prescriptions, although he may not supply medicines to other persons, is a trader, and liable to become bankrupt as an apothecary. See also, *ex parte* Daubeny, 2 Dea. 72, where a surgeon and apothecary, who sold small quantities of medicine, lint, gum arabic, &c., to chance customers was held a trader.

<sup>2</sup> See, *ante*, p. 325.

circumstances, can one partner petition for an adjudication of bankruptcy against another partner. In equity, however, a dissolution of the partnership may be obtained, and the court will decree an account of partnership dealings, or compel an observance of the contract.

Where a surgeon sold one-fifth of his business, and entered into partnership with the purchaser, for such term as they should mutually agree to continue partners, the articles providing that, in the event of the death of a partner, the survivor might purchase his share and interest in the business, but that if he should decline, it should be sold to any other person, the purchaser died at the end of fifteen months, and the surviving partner declined either to purchase, or to admit a purchaser into the business. He was charged with the value of the deceased partner's share and interest at the time of his death, which was estimated at two years' profits, and an inquiry was ordered whether there were any patients of the firm who had become patients by the influence of the deceased partner, and if so, whether any profits of the co-partnership business had been made since the death of such partner.<sup>1</sup> In the same case, it was laid down that the vendor would not have been allowed to dissolve the partnership immediately after it had been entered into, and retain the premium paid for the share in the business, but that if he had put an end to the partnership, equity would have compelled him to repay the consideration.

In *Mackenna v. Parkes*,<sup>2</sup> P., a medical practitioner, took M., another medical practitioner, into partnership, in consideration of a premium, P. agreeing to give his personal attention to the business for three years, and to introduce M. to his patients. At the date of the contract, P. was, as he well knew, suffering from Bright's disease and gout, which fact was concealed from M. P. died shortly afterwards, having introduced M. to a very limited number of patients only. Upon a bill for account, filed in equity, by M. against the executrix of P., the court directed the usual partnership accounts, with an order that the plaintiff was to be remitted so much of the premium as was reasonable, having regard to the early death of P., and the non-introduction to the patients, and restrained the defendant from suing on bills given for the unpaid premium.

<sup>1</sup> *Featherstonhaugh v. Turner*, 25 Beav. 382; 28 L. J. Cha. 812.

<sup>2</sup> 36 L. J. Cha. 366; 15 W. R. 217.



The widow or child of a deceased partner, receiving, by way of annuity, a portion of the profits, is not thereby constituted a partner;<sup>1</sup> and the same rule applies in the case of a person advancing money by way of loan, under an agreement in writing that he shall receive a share of the profits, and also in the case of a person receiving a portion of the profits, by way of annuity or otherwise, in consideration of the sale by him of the goodwill; but in the event of a bankruptcy, the two latter classes of persons are postponed to other creditors.<sup>2</sup>

### III. *Rights and Liabilities of Partners, as regards Third Persons.*

All the partners in a firm must, as a general rule, join in suing on a contract, and in actions on implied contracts, and also in actions *ex delicto*, as for libel, where the wrongful act has caused a joint damage to the partners collectively.

Where a patient has contracted specially with one partner, the terms of the contract must be adhered to, and where the personal attendance of one member of the firm is stipulated for, the firm can enforce no claim unless those services have been given.

Payment or tender to one partner, of money due to the partnership, binds all, but the receipt of one partner is not conclusive against the rest. If a debt be barred by the Statute of Limitations as against one partner, it will be barred as to all. On the death or bankruptcy of a partner, payment to the surviving or solvent partner is good.

All the members of a firm are bound by simple contracts entered into by any of the partners, within the scope of the business, whether the contract be verbal or written, and in the name of the firm, or of one partner only, but one partner cannot bind another, after notice that he will not be bound.

All the partners are liable for the wrongful act or negligence of one of their number, while engaged in the partnership business, but not for his illegal or malicious acts, unless ratified.

Every partner is bound by a partnership liability to its full extent, whatever stipulations may have been made by the partners with one another.

A partner who has committed an act of bankruptcy may, before the filing of a petition against him, bind his solvent partner, and

<sup>1</sup> 28 & 29 Vict. c. 86, s. 3.

<sup>2</sup> *Ib.*, ss. 1, 4, & 5.



be bound by him, by contracts within the scope of the partnership business, to persons not having notice.

A firm of medical practitioners may maintain an action on a joint claim for attendances and medicine supplied in their capacities both as surgeons and apothecaries, although one be registered as a surgeon and apothecary, and the other as a surgeon only;<sup>1</sup> and it seems that it is enough if only one member of the firm be registered,<sup>2</sup> and that there is nothing illegal in a partnership between a qualified and unqualified medical practitioner,<sup>3</sup> although, of course, in the latter case, an unqualified partner must not take any name, title, addition, or description implying that he is registered, or he will be liable to the penalty imposed by sec. 40 of the Medical Act, 1858.<sup>4</sup> In *Pedgrift* (appellant) v. *Chevalier* (respondent),<sup>5</sup> Pedgrift, an unregistered practitioner, and Irwin, a registered surgeon, occupied a house together, for which they were jointly assessed to the rates, and on the door of which was a wooden frame, in the upper part of which was enclosed a plate, on which was engraved the name of "*Mr. Pedgrift*," whilst on a separate piece of plate, under the former, but in the same frame, was engraved the name of "*Mr. Irwin*," with the addition of the words "surgeon, accoucheur, &c." There was no division between the names, except the line which was necessarily apparent where the two pieces of plate joined. It also appeared that "surgery" was written on another door, and "surgeon accoucheur" on the lamp over the door. Upon a complaint, under the 40th sec. of the Act quoted above, the justices assumed from these facts that Pedgrift falsely pretended to be a surgeon, and convicted him in the penalty of £10; but the court, on appeal, quashed the conviction, on the ground that there was no evidence to warrant it.

#### IV. *Dissolution of the Partnership.*

A partnership may be dissolved by the mutual agreement of the partners, or by the occurrence of any event specially made a ground for dissolution by the articles, such as the expiration of the time fixed, in partnerships for a term. In the latter case, however, if the business be carried on as before, the partnership will continue as a partnership at will, upon the terms of the original partnership, so far as applicable.

<sup>1</sup> *Turner v. Reynall*, 14 C. B., N. S., 328.

<sup>2</sup> *Ib.*, per Erle, C.J.

<sup>3</sup> See *Ib.*, per Willes, J.

<sup>4</sup> 21 & 22 Vict. c. 90.

<sup>5</sup> 8 C. B., N. S., 246.

Any partner may dissolve, at will, a partnership, the duration of which is indefinite, by giving due notice, but equity will interfere to prevent him from retaining an advantage to which he is not entitled, such as a premium paid by a co-partner, and will restrain an immediate dissolution, where great mischief would result therefrom.

Special circumstances will also justify a dissolution of the partnership before the term for which it was entered into has expired, and in such cases, equity will grant a dissolution at the prayer of one partner, though he cannot by his own act dissolve the partnership, and will appoint a receiver, to whom the partnership debts are to be paid. Thus, a dissolution will be granted where one partner is systematically excluded from the business, but the court will not take notice of mere partnership squabbles. A wilful and permanent neglect of business is a ground for dissolution, as is gross misconduct by a partner, in reference to partnership matters. In the case of a partnership between *accoucheurs* it was held that the immoral conduct of one partner was, alone, a ground for dissolution, as the particular business of the firm would be materially affected thereby.<sup>1</sup> Disagreement, or incompatibility of temper, is only a ground for dissolution, when it has reached such a pitch as to render the continuation of the partnership impossible.

Where one surgeon paid to another a premium of £1,000 for a share in a partnership for fourteen years, and, a few months afterwards, in consequence of mutual misunderstandings and recriminations, the court dissolved the partnership, with the assent of both partners, the Master of the Rolls treated the premium as having been paid for the whole of the term of the partnership, apportioned so much as belonged to the period the partnership had lasted, and ordered a return of the rest.<sup>2</sup>

Dissolution will also be granted on account of the insanity of a partner, or if he become permanently physically incapacitated from contributing his skill and industry, or if the partnership business be in a hopeless state.

A partnership is dissolved by operation of law, on the death or bankruptcy of a partner, or on his conviction for felony; and if one partner allow his share in the effects to be taken in execution, the

<sup>1</sup> *Anon.*, cited 2 K. & J. 446.

<sup>2</sup> *Astle v. Wright*, 23 Beav. 77. See, also, *Bury v. Allen*, 1 Coll. 589.

other is entitled to treat the partnership as dissolved, from the time of the levying of the execution.

Where two surgeons, in consideration of £900 paid by one to the other, entered into partnership for seven years, and in seventeen months, the partner who had received the premium became bankrupt, it was held that the consideration for which the £900 had been paid had failed, and that the solvent partner was entitled to an allowance of a sum proportionate to the period of the partnership which remained, with a lien for that amount on the partnership assets.<sup>1</sup>

On a dissolution, the partners may separately carry on the business at any place, unless restrained by agreement.

In partnerships between medical men, when one dies, the other is not obliged to give up his business, and sell the connection, for the joint benefit of himself and the estate of his deceased partner, although such partner may have paid a large premium; but, unless there be a stipulation to the contrary, he is at liberty to continue his own exertions, and his rights are not affected; and, even if he sell the goodwill, the representative of the deceased partner is not entitled to a share of the money produced by such sale, except under a special agreement to that effect.<sup>2</sup> The same rule applies to a retiring partner. Where, however, the widow of a surgeon-dentist, being his executrix, sold his business, and undertook to recommend the purchaser to her late husband's patients, the purchaser agreeing to pay £100 for the instruments, to take the furniture at a valuation, to take, at a yearly rent, the house, for the residue of the term, and to pay to the widow, her executors, administrators, and assigns, £100 yearly, for five years; and where, in a creditors' suit against the widow, for administration of the testator's estate, it appeared, by the affidavit of the successor, that he relied upon the widow's personal exertions, and that if these were not afforded, he should resist payment of the annuity, it was held that the whole, or a part of the annuity belonged to her husband's estate.<sup>3</sup>

<sup>1</sup> *Freeland v. Stansfield*, 2 Sm. & G. 479.

<sup>2</sup> *Farr v. Pearce*, 3 Mad. 74.

<sup>3</sup> *Smale v. Graves*, 3 De G. & Sm. 706.



*Sec. III.—Bonds not to set up.**I. The Law generally.*

The general rule of law is that every contract, whether under seal or otherwise, in general restraint of trade or industry, is illegal and void, as being in contravention of public policy, and injurious to the interests of the State.

Such contracts are, however, held valid, where they operate merely in partial restraint of trade, provided they be not unreasonable, and be made on a good consideration.

The reasonableness or unreasonableness of the contract, is a question for the consideration of the court, and not a matter to be left to the jury.<sup>1</sup>

Thus, where a medical man takes into his service an apprentice or assistant, with a contract that he will not carry on the same profession within certain limits, such a contract is not an injurious restraint of trade, and will be upheld, unless the limits assigned are unreasonable, for, in such case, the public derives an advantage in the unrestrained choice which such a stipulation gives to the employer of able assistants, and the security it affords that he will not withhold from his assistant instruction in the secrets of his profession, and the communication of his own skill and experience, from the fear of his afterwards having a rival in the same profession.<sup>2</sup>

*II. Stipulations held Reasonable.*

A stipulation by an assistant to a surgeon, apothecary, and man-midwife, not to carry on such business, on his own account, within the distance of ten miles from Thetford, for fourteen years, has been held reasonable;<sup>3</sup> so, likewise, has a stipulation by an assistant to a surgeon and apothecary, not, at any time, to practise as such, either as principal or assistant, at Stourport, or within ten miles thereof, after the termination of his engagement;<sup>4</sup> and by an assistant to a surgeon and apothecary, not, at any time, to practise as such, in his own name, or in the name or names of any other person or persons, at Macclesfield, or within seven miles thereof;<sup>5</sup> and by an

<sup>1</sup> See, generally, *Mallan v. May*, 11 M. & W. 653.    <sup>2</sup> See *Ib.*, per Parke, B.

<sup>3</sup> *Davis v. Mason*, 5 T. R. 118.

<sup>4</sup> *Hastings v. Whitley*, 2 Exch. 611.

<sup>5</sup> *Sainter v. Ferguson*, 7 C. B. 716.



assistant to a surgeon and apothecary, not to practise, directly or indirectly, as a surgeon, apothecary, or surgeon accoucheur, within five miles of Cassop;<sup>1</sup> and by an assistant to a druggist, not, at any time, to carry on business as a chemist or druggist, within three miles of Taunton;<sup>2</sup> and by a surgeon and man-midwife, not to set up within twenty miles of Aylesbury;<sup>3</sup> and by an assistant to a firm of surgeon-dentists, not to practise in London, after the expiration of his term of service.<sup>4</sup>

In the last-mentioned case, it appeared on the record that London contained a million of inhabitants, but it was laid down that the comparative populousness of particular districts ought not to enter into consideration at all, and that the limit of London was not too large for the profession in question.

Where A. and K. agreed to enter into partnership as surgeons, for the term of three years, and K. covenanted that, after the termination of the partnership, he would not at any time practise as a surgeon, nor reside at No. 28, Dorset-crescent, or within the distance of two miles and a half from the same, nor would attempt to prevail upon any of the patients of A., or of the partnership, to withdraw from A., or to employ any other medical man in prejudice of A., but would, in all things, endeavour to promote the business and advantage of A., as a surgeon, so far as it was in his (K.'s) power, and he could reasonably and properly be required to do, such stipulation was held unobjectionable in point of law, and valid.<sup>5</sup>

From the cases above given, it will be seen that every stipulation will be upheld, where the restraint is confined to anything like reasonable limits, and that such restraint need not be limited to the life of the person in whose favour the stipulation is made, or to the time during which such person may carry on his business or profession.

Where a medical man residing in London enters into an agreement with an assistant, it is usual for such assistant to stipulate that he will not afterwards practise on his own account, within London, and a mile, or a mile and a half, of the same; if the medical

<sup>1</sup> *Carnes v. Nesbitt*, 7 Hurls. & N. 778; 31 L. J. Ex. 273.

<sup>2</sup> *Hitchcock v. Coker* (in error), 6 Ad. & E. 438.

<sup>3</sup> *Hayward v. Young*, 2 Chitt. 407.

<sup>4</sup> *Mallan v. May*, 11 M. & W. 653. See also *Mounsey v. Stephenson*, 7 B. & C. 403.

<sup>5</sup> *Atkyns v. Kinnier*, 4 Ex. 776; 19 L. J. Ex. 132.

man reside in the suburbs, the restriction is usually confined to the place of residence, and three miles from the same; if he reside in a country town, the restriction is usually confined to such town, and ten miles from the same.

### III. *Stipulations held Unreasonable.*

A general stipulation by a medical man, or an assistant to a medical man, not to exercise his profession, is void, although the time of such restriction may be limited.<sup>1</sup>

So, in a case where the defendant stipulated not to carry on, without the plaintiffs' consent, the profession of a surgeon-dentist, &c., in London, or in any of the towns or places in England or Scotland where the plaintiffs, or the defendant on their account, might have been practising before the expiration of the service of the defendant as assistant to the plaintiffs, the latter part of the restriction was held unreasonable, on the ground that it went much beyond what the protection of any interests of the plaintiffs could reasonably require, and put into their hands the power of preventing the defendant from practising anywhere.<sup>2</sup> In *Horner v. Graves*,<sup>3</sup> a stipulation by the defendant not to practise as a dentist within 100 miles of York, in consideration of receiving instruction and a salary from the plaintiff, the engagement being determinable at three months' notice, was held unreasonable and void, but the principal grounds of the decision have been entirely overruled by the decisions in the Exchequer Chamber, in the case of *Hitchcock v. Coker*.<sup>4</sup>

### IV. *Consideration.*

"*Ex nudo pacto non oritur actio.*" A promise, whether verbal or written, made, without good consideration, by a medical man, not to exercise or carry on his profession, within certain limits, cannot be upheld.

It was, however, held a sufficient consideration to support such a promise, where a firm of surgeon-dentists agreed to take a person into their service as assistant, for four years, and to instruct him in the business of a surgeon-dentist;<sup>5</sup> and where a surgeon, apothecary, and man-midwife, took an assistant into his business,

<sup>1</sup> *Ward v. Byrne*, 5 M. & W. 548.

<sup>3</sup> 7 Bing. 735; 5 M. & P. 768.

<sup>5</sup> *Mallan v. May*, 11 M. & W. 653.

<sup>2</sup> *Mallan v. May*, 11 M. & W. 653.

<sup>4</sup> 6 A. & E. 438.

for so long a time as it should please him (the master), although he afterwards dismissed such assistant;<sup>1</sup> and where a surgeon and apothecary agreed to engage a person as assistant, and did so engage him, although it did not appear for how long a time such engagement was to last. In the latter case, Wilde, C. J., in summing up, observed, "The stipulation for the restriction of defendant's practising within the prescribed limit was to have effect only when the subsequent definitive engagement should have been entered into. Supposing the plaintiff to be a person of skill and reputation, the very fact of his engaging the defendant as his assistant, would give the latter a great advantage as a rival, inasmuch as his being so authenticated, would naturally give him an opportunity of worming himself into his employer's connection. An engagement, therefore, even for a short time, would be advantageous to the defendant, and detrimental to the plaintiff."

It was also held a good consideration, where a surgeon took into his service an assistant,<sup>2</sup> for one month, and so on, from month to month, at a certain salary, payable fortnightly, such engagement to be terminated by a month's notice on either side.<sup>3</sup>

Where an assistant to a druggist, receiving a certain annual salary, bound himself (in pursuance with an agreement made before such service commenced) not to exercise the business of a chemist or druggist, within three miles of Taunton, under a penalty of £500, to be recovered as liquidated damages, it was held by the Exchequer Chamber (in error from the K. B.) that there was a legal consideration for the contract, and that the court will not, in any particular case, weigh whether the consideration is equal in value to that which the party gives up or loses by the restraint under which he has placed himself.<sup>4</sup>

#### V. *Interpretation of the Contract.*

The stipulations contained in such a contract are divisible, and, if part of the same be unreasonable, and therefore illegal and void, the agreement is not void altogether, and the remaining stipulations, if valid, will not be affected by the illegality of the others.<sup>5</sup>

Where an assistant entered into the service of surgeon-dentists,

<sup>1</sup> *Davis v. Mason*, 5 T. R. 118.

<sup>2</sup> *Sainter v. Ferguson*, 7 C. B. 716.

<sup>3</sup> *Carnes v. Nesbitt*, 7 Hurl. & N. 778; 31 L. J. Ex. 273.

<sup>4</sup> *Hitchcock v. Coker*, 6 A. & E. 438.

<sup>5</sup> *Mallan v. May*, 11 M. & W. 653; *Chesman v. Nainby*, 2 Stra. 739.



carrying on business at Great Russell-street, Bloomsbury-square, in the county of Middlesex, and stipulated not to carry on the business of a surgeon-dentist, in *London*, after the expiration of his term of service, it was held that he was not liable to an action for breach of contract, for having established such a business in the same Great Russell-street, for that the word "*London*," in its strict and proper meaning, meant the City of London, and that a statement in the case, that "*London*" had a popular or colloquial sense, in which the said Great Russell-street would be understood to be within its limits, was not sufficient for the purpose of causing a different construction to be put upon that word in the instrument.<sup>1</sup>

Where an assistant to a surgeon and apothecary stipulated not to practise as such, within certain limits, after the termination of his engagement, under a penalty of £500, it was held that, in case of a breach of the contract, the sum could be recovered as liquidated damages, on the ground that in such a case it was impossible for the plaintiff to say precisely what damage might result to him from the breach.<sup>2</sup>

In *Carnes v. Nesbitt*,<sup>3</sup> the defendant, by an agreement in writing, undertook to serve the plaintiff, a surgeon and apothecary, for one month, as assistant, and so on, from month to month, at a certain salary, payable fortnightly. It was further agreed that the engagement should be determined by a month's notice on either side, and that the plaintiff should find and provide a furnished house for the use of the defendant, and should allow him certain fees. In consideration of the premises, the defendant promised not to practise, directly or indirectly, within five miles from C——, without the written consent of the plaintiff, under the penalty of £100, to be recoverable as liquidated damages, "the said sum having been specified by the parties as the amount to be paid and recoverable by the plaintiff for the breach or non-observance by the defendant of such stipulation." It was held that the providing a dwelling-house for the defendant was not a condition precedent to the plaintiff's right to sue for a breach of the agreement not to practise, and that it was no answer that the agreement was determined by notice given by the plaintiff, as the restriction as to practising applied to the time when the defendant ceased to be assistant. It

<sup>1</sup> *Mallan v. May*, 13 M. & W. 511.

<sup>2</sup> *Sainter v. Ferguson*, 7 C. B. 716.

<sup>3</sup> 7 Hurls. & N. 778; 31 L. J. Ex. 273.



was also held that the plaintiff was entitled to recover the full amount of £100, for a breach of the agreement, but that he was not also entitled to an injunction to restrain the defendant from practising within the prescribed distance, since, upon the true construction of the agreement, the £100 were liquidated damages which the parties had agreed should be paid as an equivalent for the defendant's so practising.

Where a surgeon stipulated that he would not practise as such at No. 28, Dorset-crescent, or within the distance of two and a half miles thereof, measuring by the usual streets or ways of approach thereto, nor reside within the distance of two and a half miles of No. 28, Dorset-crescent, and that, in case of the breach of such stipulation, he would pay the sum of £1,000 as and for liquidated damages, and not by way of penalty, it was held that the distance was to be measured, not by the most frequented public ways, but by any of the usual public ways, and that the sum of £1,000 was liquidated damages, and not a penalty.<sup>1</sup>

Where no precise language is used, but the covenant is, generally, not to practise within so many miles of a certain place, the distance will be measured "as the crow flies," and not by roads and streets.<sup>2</sup>

In a case where the plaintiff and defendant had been partners, as surgeons, at A. and B., and, on a dissolution of the partnership, the defendant had covenanted not to practise at A. or C. without the consent of the plaintiff, on an action for breach of this covenant, the defendant was allowed to plead, for a defence upon equitable grounds, that part of C. was in the B. practice, and that it was not intended that the covenant should restrain him from practising there, but that the covenant was so framed by mistake, owing to the circumstance that that part was surrounded by the district of B., and was habitually identified, by the parties, with, and was part of that district, and that the breaches were committed in that part.<sup>3</sup>

In *Rawlinson v. Clarke*,<sup>4</sup> the defendant, who carried on the business of a surgeon and apothecary in Park-street, Camden Town, assigned his business to the plaintiff, and covenanted that he would not, directly or indirectly, by himself, or in co-partnership with any other person or persons, carry on or exercise the practice

<sup>1</sup> *Atkins v. Kinnier*, 4 Ex. 776; 19 L. J. Ex. 132.

<sup>2</sup> *Duignan v. Walker*, 33 L. T. 256.

<sup>3</sup> *Luce v. Izod*, 2 Jur., N. S., 573.

<sup>4</sup> 14 M. and W. 187.

and profession of a surgeon and apothecary, or either of them, either by residing, or by visiting any patient, within the distance of three miles from the said place of business in Park-street aforesaid, and that, in case of any breach or non-performance of such covenant, he would pay to the plaintiff the full sum of £500, to be recovered as and for liquidated damages, and not as a penalty. After the execution of the deed, the defendant attended several ladies in their confinements, within the distance of three miles from Park-street, and received money for his services, but it was proved that he gave these attendances, with the knowledge and consent of the plaintiff, and in consequence of a request on his part that the defendant would, for a certain period after the date of the deed, continue to visit the patients, for the purpose of assisting the plaintiff, and keeping the connection together, and the jury found that the defendant, in these instances, exercised the practice of a surgeon for the purpose of assisting the plaintiff. It was held that this did not constitute a breach of the covenant, for that the plaintiff was, in truth, carrying on the business by the defendant's means, but that, had such a breach existed, the plaintiff would have been entitled to recover the full sum of £500.

## APPENDIX.

### *Sec. I.—Medical Etiquette.*

BY ALFRED CARPENTER, M.D.

THE conduct of medical men towards each other has an interest for the many as well as for the profession itself; for their behaviour in private has a counterpart in public, and becomes visible in their general intercourse with the world.

The unconscious influence which arises from mutual respect, when felt for each other by a considerable body of men belonging to a learned profession, has a corresponding action upon other people, and is reflected back again in increased regard by the public for the profession generally. This action gives a continual pledge for good behaviour. It compels an observance of the important principle of self-respect, which cannot at any time be lowered without injury, and it leads to greater attention to the amenities of personal intercourse, in a manner not always suspected.

When a man has obtained a good character for honesty, for courage, or for ability, he has an increased inducement to preserve his character untarnished, or his ability and his courage unquestioned. Thus it must happen (as in war) that the individual officer of a particular corps, on the field of battle, considers the honour of his regiment to be in his keeping, and naturally fears by any act of cowardice to tarnish its fame. So each medical man should preserve his character as a gentleman unblemished, and conduct himself towards his *confrères* so as to increase the moral influence of his profession, and, by that means, assist in elevating the moral tone of the whole community.

It is often found that men err in their conduct towards each other, more from ignorance of the right course to be pursued, than from any desire to do wrong. They commit themselves to a

particular line of conduct before they are aware of the consequences resulting from the line they pursue, and in self-defence do some act, from impulse, because they think that their own interests are injuriously affected by the behaviour of some other persons. They can see the first scene, but not the succeeding stages of the act. Having (as it were) thrown the die, there is not always an opening for an escape from the consequences of the act, without making an acknowledgment of erroneous conduct—a noble part which few men have the moral courage to perform.

The object of the succeeding pages is to point out some of the directions which appear to be most serviceable in determining the conduct, which should be followed in carrying out the golden rule of "*doing as you would be done by*," and which, in general parlance, is called medical etiquette. It might be considered that the golden rule, if always adopted, would be sufficient for all purposes, and that not another word would be necessary, but it is not always easy to put oneself in another man's place, or even to know, what is the golden rule. It will not, therefore, be altogether lost labour to review the various positions in which medical men may be placed in their relations to each other, and to consider, somewhat in detail, their duty towards the profession to which they belong, as well as their individual interests, and also to so act that the welfare of the outside public shall not suffer any injury.

The subject may, therefore, be treated under several heads, though all more or less interlace. Thus, we may consider what should be the conduct of the members of a learned profession towards each other individually, as well as collectively; in social life, as well as in business engagements. Then we may review the course which should be followed in their intercourse with the general public, and point out, how to avoid conduct that should be deemed injurious to the interests of either party, whilst those of the general public should not be allowed to suffer, or the direct interest of the people neglected.

There is often a strong opinion expressed by certain portions of mankind, that medical etiquette is opposed to the interests of the outer world; that it is promoted as a part of the great principle of protection to native industry, and as much to be opposed as the same dogma ought to be (in the opinion of free traders) in political economy;—that medical etiquette is, in fact, protection for the profession, as opposed to free trade. This is a very specious line of



argument which has no foundation either in truth or the results of practice. The punctilious attention to the duty implied in the term gives a much greater chance of safety to the public than of gain to the profession; it is in their interest, even more than it is in the interest of medical men themselves, that infractions of the rules of medical etiquette should not be allowed to occur with impunity. The idea of injury to the public, and advantage to the profession, at the expense of the former, can only arise from ignorance of the principles involved in the term, and the perversion which is sometimes made in its meaning to suit the purposes of designing persons, who see a present personal advantage in its misconstruction, which advantage is often obtained at the expense of some other member of the profession, and gives no gain or protection to the public at all.

It is evident that an action or an idea which is based upon misconception is not safe as a foundation for correct reasoning. Those who would use, or approve the use of such, would also promote any other wrong application of a principle, if it suited their purpose to do so. It cannot be to the interest of the people that wrong principles should prosper: it cannot be to the interest of the general public that any man should exalt himself by depreciating his rivals, even by inference only. We all know that nothing blinds a man so much as prejudice; it may be fairly assumed that every man is prejudiced in his own favour, and this personal obscurity of vision and egotistical appreciation is most often the foundation of those breaches of professional etiquette which sometimes scandalize the medical world, and do serious injury to all implicated.

The right interpretation of the rules which should be observed for the purpose of preventing such scandals, is the duty now undertaken.

The subject divides itself into three principal heads:—

1. How to get into practice without lowering the dignity of the profession.

2. The conduct to be observed in holding intercourse with members of the same profession, especially in the matter of consultations.

3. How to hold intercourse with the public so as to avoid the appearance of quackery.

The writer has no knowledge of the rules of etiquette which should be specially observed by members of the army, the navy, or the mercantile marine; it is, therefore, only intended to consider the civilian's position, in the following pages.

The young beginner, having qualified himself according to law, now makes his selection; he may determine to try for general practice only, or may become a teacher as well as a practiser of his art.

It will be well here to consider the profession in its two aspects or divisions, viz.: the class of consulting practitioners, and the ordinary general practitioner, or family doctor. This classification is, however, imperfect, and does not properly define the distinctions which exist. The consulting practitioner is, or has been, generally, a teacher at a medical school, but he often becomes a general practitioner in his method of practice, whilst it sometimes happens that general practitioners become consultants without having been teachers at a public hospital. Indeed, the rule cannot be absolute, for it is evident that the medical officers attached to small country hospitals cannot be consulting practitioners, for they have not scope in the scattered population of the district, for their practice. The division of labour becomes more easy, according to the density of the population and the rapidity of transit from place to place. The division or classification proposed is more marked, therefore, in London than anywhere else; and now that express trains enable a man to travel a long distance in twenty-four hours, it is in London that we may look for the most decided class of consulting practitioners, and among them, therefore, we should expect to find the best observers of the rules of etiquette, and there also that the rules should be most strictly enforced.

#### *The Consulting Practitioner.*

The determination being made that teaching theory and method as well as practising, is a part of the new licentiate's power, he attaches himself to some public institution, and fills up his time in learning, in a more abstruse manner, the philosophy of his profession, and by giving gratuitous advice to the patients who seek the aid of the particular hospital to which he is attached. He instructs the students in the rudiments of their profession. He has a long time to wait for remunerative practice; but ability, when combined with tact and common sense, are sure ultimately to lead to fortune, if he has moderate industry, and if he really confines his private professional work to true consulting practice. His aim

should be to gain the confidence of the rank and file of the profession, rather than to angle for minnows among the shoals of small fish which make up the general public. A forgetfulness of this (which should be an axiom) is the cause of much distrust among general practitioners, and has tended very seriously to decrease the frequency of consultations. When not followed, it tends to remove the aspirant for consultation fees to the rank of a general practitioner, because he tries to cultivate general practice, and to become the family medical man, rather than to stick to the higher pursuit of adviser to the adviser of others.

If a man determines that his forte is in consulting practice, he will do well to prevent the rise of anything like a feeling of rivalry in the minds of those who naturally wish to keep their patients, and yet would be glad of the consultant's advice, if they could have it, in a given case, without the almost certain effect of transferring their patient to the new adviser direct, when similar professional aid is required. It is evident that teachers of theory and practice should also be teachers in points of honour. A lax code of medical honour at head-quarters is sure to pass downwards with increased laxity, to be surpassed in irregularity by those in the rank and file of the profession. It is, therefore, for those who act as leaders to set the fashion, and to see also that it is followed. A rivalry between Dr. C., the junior assistant-physician at St. Brazennose, and Mr. Z., the old family doctor at Kensington or Clapham, is certain to be injurious to the interests of the profession, and cannot be beneficial to either of the gentlemen named, or to the public at large. The rivalry is soon noted by busybodies, and is certain to be imputed to the wrong motive; the more impudent of the two gets a credit which probably, nay certainly, belongs to the less assuming. This rivalry ought to be impossible—the interests of all engaged demand it. A similar kind of antagonism cannot exist between the attorney-at-law and the Queen's counsel; any barrister would be at once degraded if he condescended to enter into competition with a solicitor for legal practice, and it is manifest that the interests of the public would suffer if it were allowed. There is a considerable difference, it is true, between the position of fellows and members of the College of Physicians, and Queen's counsel and serjeants-at-law. Yet it would much advance the interests and correctness of medical practice if a class were formed in the medical profession which



should correspond with that of counsel learned in the law, and be as strictly defined as that which pertains to the bar. A man of ability and good common sense who determined to abide his time as a pure consulting practitioner, and to decline the personal care of individual cases, would be sure, sooner or later, to make his way, and become the close friend of the general practitioners, who would fly to him in cases of difficulty and doubt, to their own comfort, and the much greater safety of their patients. Some teachers have a considerable power in gaining the confidence of the students, which clings to them in after life, and is a source of much gain to both, as well as of advantage to the patient; indeed, if a man fails to gain the confidence of the general practitioner, no matter what his ability may be, he will have much greater difficulty in attaining the high position to which he aspires. Well-known names will at once recur to the reader's mind as having shipwrecked themselves on the rock of lax medical etiquette. Aspiring to be consultants, they have never risen fairly beyond the rank of general practitioners, because they have tried to attach patients to themselves who have been recommended to them by other practitioners, for an opinion upon a given state. The patient has been caught by an appearance of knowledge upon that point for which he consulted the physician; he gets into doubt between his family medical adviser and the latter, and between the two, not unfrequently falls to the ground. The medical adviser is often designedly injured both in reputation and pocket; the physician gets a few guineas, and the profession of medicine is degraded. It would have answered his purpose much better if he had taken higher rank, and, in that particular case, have declined to advise, except in alliance with the family doctor.

A complete line of division between the consulting practitioner and the family doctor used to exist when the latter was also the apothecary; the former wrote the prescription, whilst it was made up by the latter. This division is now abolished; a large number of high-class general practitioners in large towns do not send medicine to their patients, but leave the dispensing part of the work to the druggist. There is no difference in practice between such an one and the fellow of the College of Physicians, whilst the large number of men who are graduates in medicine of the various universities which grant medical degrees, and who practise as general practitioners, produce a condition which still further tends



to cut away the ground from under the feet of the members of the College of Physicians, and to alter their status from what it was. It appears to the writer that a fair field is now open to any man who would start the plan of practising in a manner similar to that of Queen's counsel, viz., to refuse to have the personal charge of patients, or to be responsible for their daily management. He should have details of cases submitted to him, in writing, before the consultation is held, and then give a written opinion upon the case, which should be for the future general guidance of the family doctor. This plan would give an opportunity to general practitioners of getting counsel's opinion, almost as a matter of course. It would put an end to the lax system of verbal communications which is now generally adopted, and it would compel case-taking in private practice. It would much advance the study and the practice of medicine, by keeping the actors to facts, not fancies. It would at once abolish the innuendoes which are often thrown out by one side or the other, or at least are reported to be thrown out by the patient's friends,—innuendoes often intended to reflect discredit upon the other party to the consultation. It would compel the consultant to point out a general course of treatment, so that he should consider and direct the principles rather than the details to be followed. The consultant, having a written case for his consideration beforehand, would oblige the ordinary attendant to show a knowledge of his duty, and compel him to avoid a routine practice, which is the source of much danger to patients, and ought to be discouraged as much as possible. Consultations would be much more usual than they are now, and, in severe cases, would follow as a matter of course. Another good result would also accrue. *Literæ scriptæ manent.* The case and the opinion would remain for future reference in future illnesses. If the case be prepared at the suggestion of the patient's friends, it should be paid for with a consultation fee, and if the patient desire to have a copy of it, and also of the opinion, both should be allowed, but at a further expense to him. This course would tend to prevent many petty squabbles concerning the meaning of a term, or the intention of the consultant, which appear now and then as indecent disputes in the columns of the medical press, and which reflect discredit on the profession itself. The disputes are generally caused by trivial circumstances, which ought not to have arisen, and would not be possible if written opinions were always

given, and if each man would contrive to follow the golden rule of doing to others as he would be done by, and not impute motives which he would scorn to acknowledge as capable of moving himself in a manner similar to that complained of.

*With Whom to Consult.*

The consulting practitioner must be careful as to persons with whom he acts; he must not act in consultation with any man who is not a registered practitioner. It is his duty to make inquiry, and verify for himself, from the Medical Register, the position of the person who asks his counsel; so that by no chance is he likely to be placed in a wrong position on arrival at the patient's house.

In some parts of the country, a class of persons exist who are called bone-setters. It would be quite contrary to correct principles for any man, either consulting or general practitioner, to meet such men in consultation. They are eminently quacks proper, and ought to be avoided. It has been argued in a most specious manner that the principles of humanity must set the rules of etiquette aside, that a man who is in the hands of these men, and who yet desires the advice of the orthodox practitioner, must not be left to perish; that it is, therefore, the duty of the regular medical man to assist the case, and to meet the quack in consultation, and thus save the patient from the possible results of ignorance or incompetence. This is false reasoning, and, if followed in practice, likely to produce more evil than good. The patient must dismiss the quack before he has the service of the regular practitioner, otherwise a premium is held out to those persons who are ignorant of right principles of practice to prey upon the general public, knowing that, in emergency, they can get assistance from legally qualified medical men. They may thus get rid of responsibility if it be cast upon them; a result only likely to happen when the error is discovered soon enough. No note is taken of those errors which are not discovered until it is too late to rectify them. Such courses would not be allowed for a single day in the practice of the law, and human life ought to be more sacred than property, though, unfortunately, it is a blot upon our legal shield that, at present, a man's purse is of more value than his person.

A strict adherence to the rule here laid down would do much to demolish the class who, by assuming titles to which they have no right, dupe the public into a belief that they are regular medical men.

For these, as well as for other reasons, a consultation must not be held with a druggist, though it is not meant that open surgeries should be prohibited. It is evident that in poor districts, and among poor people, open surgeries are a boon to the poor, and also to the doctor; to prohibit them would be a great hardship to the poor, and deprive the regular medical man of the small fees such people are alone able to pay. The poor man likes to go into the open surgery to have his ailment prescribed for, the medicine made up, and the money paid over the counter. To discourage this practice among registered practitioners is to throw a very large amount of prescribing into the hands of the druggist, who is not slow to avail himself of the chance; much more medicine is now prescribed by the unqualified man than people have any idea of; as a consequence, much mischief results to the general public; acute disease obtains a hold unchecked, and many a valuable life is lost because good assistance is obtained only when too late to be of service. It is earnestly contended that a regular practitioner who keeps an open surgery ought not to lose caste for so practising, but he must not join the sale of toothpicks and sugar-plums with the dispensing of medicines, otherwise he fairly loses position, and must not complain if he is treated as a tradesman, and, though registered as a regular practitioner, refused the ordinary etiquette in consultation. It has been said by a writer of some position, that "the profession of medicine is either a noble calling or a low trade;" it is the duty of every medical man to rescue it from the reproach conveyed in the last two words, and by no act or deed whatever to give countenance to the idea contained in them, or make it possible for the "noble calling," which is the alternative term, and the real definition, to be forgotten.

The propriety of an orthodox practitioner consulting with those who practise unorthodox medicine, is often doubted. Thus the question arises as to whether a physician, or any qualified practitioner, would be justified in meeting an acknowledged homœopathic practitioner, though legally registered as a medical man. The public are inclined to insist upon its propriety, but it is self-evident



that such consultation could not be in any way beneficial to the patient, for there would not be any common ground for consideration. It would correspond in effect to the result of a consultation between a clergyman of the Church of England and a Hindoo, or a follower of Mahomet and a Jew, as to the correct way in which to baptize a child, or of one attempting to assist the other at a marriage ceremony. The orthodox practitioner must not consult with, but must insist upon, the retirement of the other, and not prostitute his calling at a shrine which he considers as unholy or imposture, for the sake of the fees. It is impossible for such kind of consultation to be beneficial, and no right-minded man can lend himself to foster any such delusion. The homœopath himself, if he has common prudence, will make as much objection to the plan proposed as the orthodox medical man ought to do.

There is much difference of opinion as to the propriety of a consultant seeing and advising a patient who is already under the care of another medical man, without first communicating with that other. It is no uncommon thing for a patient to take, as it were, counsel's opinion, for himself. Being under the care of his family doctor, and intending to continue so, he yet desires to find out whether his medical adviser really understands his case. He goes, therefore, to Dr. —, and states his symptoms, possibly adding that he does not think that his own medical man quite understands his case; ought Dr. — to prescribe, without any previous communication with Mr. —? The rule of practice is for him to do so without hesitation. Sometimes the prescription is followed, without Mr. — being at all aware of it, though the latter continues his attendance, and supposes that his treatment, not Dr. —'s, is carried out. Sometimes Dr. —'s is not followed at all, and the prescription is thrown into the fire, or kept as a curiosity. It is quite evident that both the medical advisers are placed in a wrong position by such a custom, and the practice of medicine made to occupy a foolish part.

The *contretemps* ought not to be possible. Dr. — ought not to prescribe without knowing Mr. —'s opinion of the case, and the treatment he has pursued, and such a course should be followed as would prevent the chance of treatment in the manner suggested.

A few high-minded men in the profession have refused to allow the chance to arise. The plan has not been popular with the public,



but the honour, the well-being of the profession, requires that it should be universal, and whilst the utmost liberty should be accorded to the people to choose and change their medical advisers, they ought not to be able to get opinions upon their cases from several practitioners at the same time, unless they deliberately determine to deceive, in which case no rules can be of use to restrain them. As in law, so in medicine, the opinion is based upon the terms of the case. If the terms differ, the opinion may vary.

Times and seasons change, and so do customs. It was formerly the rule for the physician to religiously avoid interference in a so-called surgical case; it was expected that surgeons should follow the same plan, so that in the wards of a large hospital it was no unusual thing for the physician to be prescribing for internal disease, and the surgeon treating an external sore dependent upon the diseased internal state, without any consultation taking place between them, and without any common base for action. This rule is now all but obsolete; every good physician must be well acquainted with the local manifestations of general disorders, and no surgeon can properly treat his cases without the physician's knowledge. He must not be ignorant of the principles of medicine, or he will do more harm than give benefit to his patient. It is still the rule, however, for the physician to leave the operative part of surgical practice to the surgeon, and this is right, for the operating surgeon must have practice for perfection, and as operative surgery is not frequently wanted, the operators must, necessarily, be few, and should be honourably dealt with by the larger body. It is no prejudice to the reputation of any medical man that he should transfer surgical cases requiring operation to the operating surgeon. This transference is easy enough in a populous district, but not always to be accomplished in a rural part of the country; hence it happens that rural practitioners have opportunities forced upon them, and must be at all times prepared for every exigency which may fall to the lot of the profession. It is only right to say that the trust is seldom forfeited, or improperly performed.

*The General Practitioner.*

If a man determines that he is cut out for general practice, rather than consultations, or if a position in life is chosen for him, rather than by him (which is more often the case), and he begins professional life as a general practitioner, he may commence in various ways ; he may enter into partnership with some old-established medical man, or he may purchase the succession to some other man's practice, or, trusting to his belief in his own ability and good fortune, he may put up his name upon his door, and start independently of any old connection.

The introduction of proper persons by medical men, as their assistants and their successors, is a perfectly legitimate transaction. When infirmity interferes with a man's ability to perform his duty, when age creeps on, and future retirement is contemplated, or when work is in excess of power to do it, then it is right and proper. It is not, however, creditable to the profession for practices to be put up to sale and disposed of to the highest bidder, irrespective of the character and the ability of the buyer—it would be well if more strictness were exercised ; but it must be acknowledged that the larger number of these transactions have this requirement as a part of the conditions of sale.

If a man becomes a junior partner in an old firm, he is at once received on the same terms as the other members of it, and the same courtesy should be shown to him as is extended to the senior member. There is some difference between medical partnerships and other business arrangements of a similar character, for partners are here apparently rivals. It becomes necessary, therefore, for each to determine that he will act with the most scrupulous honour, and to be especially careful of his partner's fair fame, and not allow any one to detract from it, any more than a man would allow his own wife to be maligned. If a man allow his own reputation to be built up by a depreciation of his partner's skill, he is preparing a rod for his own back, which will at some future day be severely felt. In partnerships, the golden rule becomes especially applicable, and the least departure from it is likely to be attended by more serious consequences than in the case of persons not intimately connected by business transactions.

If the new doctor does not become associated with an older prac-

tioner, he will probably have to wait some time for much work. It is this waiting for practice which too often leads men to forget the ordinary rules of medical ethics, and their duty towards their professional brethren; whilst, on the other hand, the older practitioner looks with a jaundiced eye upon the new-comer, and accords to him a sorry welcome, it may be, even a rude reception, which is sometimes made the shallow excuse for breaches of right conduct, by the junior.

It is evident that the new-comer is (or at any rate will be) the stronger; it will be to his interest to bear with the petulancy and ill-nature which may possibly be evinced towards him, by those who look upon him as a poacher upon their manors, and who may feel the effects of age or infirmity creeping upon them, before the public perceive it.

The new-comer should be very forbearing, and be most scrupulous not to resent any supposed slight.

In small towns and country districts, it is the custom for the new-comer to call upon the older established practitioners in the neighbourhood. The new doctor intimates his intention of practising there by calling upon, and introducing himself to, the older men. This rule would be more honoured in the breach than in the observance of it. It does not appear that an intention to be a rival is a good reason for intruding upon a neighbour; and, if the introduction is not to be had through the agency of a mutual friend, it will be obtained in a more satisfactory manner by adopting a strictly honourable course towards the older medical man, whenever any opportunity happens for showing the character of the new-comer. The older man will be certain to consider himself somewhat aggrieved by the new one's action, and it is prudent to disarm the antagonism by a strict adherence to the golden rule.

The first cases to which the new-comer will probably be summoned will be cases of emergency, and his conduct towards his rivals will be closely studied by them, and also narrowly watched by the public. His object should be to disarm the natural animosity of the older men, not on any account to try for practice by any kind of competition based upon mercantile principles. He should adopt the scale of charges belonging to the district, unless there should be anything preposterous in them, and he must not, by any word or deed, lead the outside public to suppose that it will be cheaper to employ him than their own medical man. To offer



to attend any body of men such as are enrolled in a benefit club, or the *employés* at a particular workshop, at lower terms than is usual in the district, is highly injurious to the interests of the whole profession, and the man who does so deserves to forfeit his title to the general esteem in which medical men are held, as well as that respect which ought to be held by individual members of it towards each other. He values his own services at a lower rate than his neighbours do theirs, which is probably a right estimate to put upon them; or, still more likely, an estimate which is, even at the reduced rate, too high. It may be argued that a man has a perfect right to estimate his own ability and judgment as he thinks fit, but he also lowers the good name of the college or school to which he belongs, and depreciates the honour of the profession of medicine—a course of conduct no man has a right to pursue. It is impossible, in the medical profession, for any man to live for himself alone.

The custom of underbidding for practice encourages unscrupulous and dishonest men to quarrel with the medical men upon trivial points; to dispute their charges; to get into their debt and forget to discharge their obligations; then, to injure their reputation, and, instead of discharging their liabilities, to go off to the neighbouring rival, and pretend to make out that the advent of the new doctor is a great boon to the neighbourhood, and a comfort to the people around. The result is that the new comer gets the patronage of all those who forget to pay their doctors' bills, and eventually reaps the reward of his own departure from the rules of justice, for he gets heaps of bad debts, and a large share of that abuse which he helped to bring upon his fellow-practitioners, by rendering the transfer of patients an apparent favour to himself. It is this plan of courting practice by underhand means which makes it so easy for men to forget their obligations to their doctors, and heaps up the unpaid accounts which stand in every medical man's ledger.

It may be put down as an axiom resting on a good foundation, that those in any society who run down their doctor—who inform their friends that they have been obliged to "give him up," as the style is, because he is unskilful or inattentive, or because he "does not understand their complaint"—do so because he displeased them in some way, and have really left him because he has signified his desire for them to do so, probably by reason of their



neglecting to discharge the claims he has upon them for honest professional services. Family doctors' greatest detractors are those who have thus, and often thus only, discharged the accounts which stand against them.

A word may be said here upon the propriety of taking legal proceedings for the recovery of fees. It seems derogatory to the honour of the profession to do so, except in very special circumstances, such as glaring cases of attempted fraud. It is, fortunately, a very rare thing for any one to proceed against those who are already in difficulty, that is, against those who already feel the ill-effects of *res angusta domi*. The doctor will be none the worse for allowing the poor and needy to repay him by good words. It is different with the rich and those well-to-do in the world; when these try to evade the fair claims of the doctor, it seems wrong not to make them do justice, yet it would be always better for a man to consult with his professional friends before going to law to enforce fees. If a court medical, or a mutual society of any kind, existed among the medical men of the district, it would be best to submit every such case to its consideration, before any individual member should drag the profession through the mud in trying to establish claims which may be doubtful or unfair, and which can only result in damage to himself, and lower the public estimate of the whole profession.

Some men are accustomed to do much gratuitous work, and by so doing to injure themselves, in the first place, and the profession, afterwards, by giving medical assistance to numbers, for nothing. This plan is very praiseworthy under certain circumstances, but it must not be carried to excess. If persons are able to pay for such attendance, it is a great injustice to both doctor and his neighbours, for it depreciates the public idea of the value of the work done.

But there are some classes of persons from whom it is not usual to take fees. Thus, the families of medical men, and medical men themselves in actual practice, are not to be expected to fee those whom they consult. This rule ought not, however, to apply when the medical man is wealthy and well able to pay, nor when he has retired from the active practice of his profession, and is taking his ease, especially when the advice of a stranger is sought; but the necessitous widows and orphans of medical men are always considered to be on the free list, and from them fees are very pro-

perly refused. It is also the custom for most men to decline to receive fees from curates and clergymen with limited incomes, especially those who have large families (which is often the case); the same privilege is often accorded to Dissenting ministers, who have not (as a class) large incomes. It is wrong, however, for any man, except under special circumstances, to fail to charge for his attendance upon any person who is fairly able to pay for the same, such charges being made upon some intelligible plan, capable of being understood, before the attendance commences.

If the new doctor (whom we will call Mr. Z.) is summoned to one of Mr. A. B.'s patients, in the accidental absence of the latter, it will be Mr. Z.'s duty to act as Mr. A. B.'s deputy, and then to inform Mr. A. B. of the nature of the case and the kind of treatment he has adopted. This information should be conveyed either by note, or by calling at Mr. A. B.'s residence. He should signify to the family of the patient, his intention thus to act. If they should wish him to see the case again, it should be in consultation with the family medical attendant, and Mr. Z. will be fairly entitled to a proper fee, which the family medical man should advise them to pay.

If Mr. Z. should be called in and consulted by a patient who is already under Mr. A. B.'s care, he ought to request a consultation with Mr. A. B. on the nature of the case, and the treatment he would advise. The patient may decline this course, and insist upon dispensing with Mr. A. B.'s services; Mr. Z. may then take charge of the case, unless the reasons for dispensing with Mr. A. B. are ridiculous, and can be easily removed. If he state most decidedly that he will not have Mr. A. B.'s attendance again, Mr. Z. has done his duty; the latter may also fairly keep the case, if Mr. A. B. decline the consultation offered.

If Mr. Z. is sent for in a case of emergency, because he is nearer to the patient than is Mr. A. B., who is the ordinary medical attendant, it is Mr. Z.'s duty to suggest that Mr. A. B. be summoned, and to propose that on the arrival of the latter, he (Mr. Z.) should give up the case. If they decline to send, and give some other reason than the mere fact that Mr. Z. has performed certain duties to their satisfaction, Mr. Z. may keep the case, but Mr. A. B. should be informed that this did not arise from any want of courtesy on Mr. Z.'s part, and that he did wish to act properly towards the former.

If Mr. Z. is summoned in emergency to a case already under Mr. A. B.'s care, and Mr. Z. thinks it necessary to alter the treatment, he must do so only as subject to Mr. A. B.'s approval. It is injurious to the interests of all parties concerned, for sudden changes to be made in the treatment without the last adviser knowing something more of the history of the case and the reasons for previous treatment than can be conveyed to the new doctor by the friends of the patient. The alteration of treatment may be looked upon as a condemnation of the former adviser's plan. It may be necessary to make a change, for the symptoms may have changed; but it ought to be made clear that such is the case, and the gentleman making the change must consider it as a part of his duty to protect the professional reputation of his absent *confrère*, even if such a course be apparently injurious to himself. If his own treatment is right, and that of Mr. A. B. wrong, the patient and the friends will find it out, without Mr. Z. having to declare his own superiority.

If a gentleman is called upon to attend a case of midwifery for another with whom he is not on terms of intimate friendship, it is more satisfactory for the usual fee to be divided between the stranger and the ordinary medical attendant. The stranger should not accept any fee from the family unless the full fee be paid to their own medical man. It is not fair, however, for the man who does the active work to have none of the advantage. The division of fee would make every man less unwilling to perform such work in the unavoidable absence of the medical man engaged.

If called to a surgical case which has been already dressed and taken care of by another, and is to remain under that other's care, Mr. Z. should not interfere with the dressings, except by consent of the other.

It is not unusual for a man to visit an injured patient, on behalf of a railway company, or any person who has been instrumental in causing the injury; he ought not to do so except in company with the ordinary medical attendant, otherwise he is acting as the spy—a position most derogatory to the dignity of any profession. He must not remove dressings except with the assistance of the ordinary medical attendant.

If the first surgeon called in is not the family doctor, he must give up the case on the arrival of the latter. The latter should



have the assistance of the first attendant at the next dressing, if either of them think it requisite.

It sometimes happens that a medical man is dismissed on account of some pique or some delusion on the part of the patient. The friends do not wish a change, but the patient insists upon it. In such a case, it is more honourable for the new-comer to undertake the case, as deputy to the family medical man, and refuse to benefit himself by a delusion which causes injury to an innocent man.

There is much caution requisite at all times in listening to the statements of patients. They frequently see things in a different light to that intended; they twist circumstances, and draw inferences upon the most trivial foundations, stating things often to be as they wish, and not as they really are. It will be prudent never to act upon any statement which is made by a patient to the detriment of another man, without the most perfect corroborative evidence, and on no account to let it influence the action of any one in his behaviour towards a medical neighbour. If he conceives himself to be injured by the statement, he should either forget it at once, or seek such an explanation from the other, as will probably satisfy him that the circumstance was quite different from that reported to him. As a rule, it will be found generally more satisfactory to forget the whole matter than to stir up strife.

Medical men will find it always to their advantage to refuse to be mixed up in any way with the private affairs of their patients, and to decline to transact any business, but such as naturally springs out of their professional attendance. It sometimes happens that it is impossible to avoid complying with the requests of some patients, when strenuously urged; but this is a different matter from thrusting one's advice upon patients, and interfering in their private affairs. The daily papers often give evidence of such interference, and, when brought before the public, it never reflects credit upon the actors, or their profession. It is right, certainly, in some cases, for the medical attendant to suggest the propriety of the patient making his will, but on no account should he be an active agent in drawing up the same, or allow himself to be named residuary legatee.

When a medical man is likely to become the richer by his patient's death, if he knows of the contingency, it becomes a *sine quâ non* that he should be no longer the medical attendant upon

that man. In cases of great emergency, there is no legal objection to the medical man being a witness to a will; but it is always better even for that duty to be performed by some other person.

In cases of great danger, it is not right for the medical attendant to encourage his patient with false hopes, to delude him with the idea of recovery, when there is no chance for him, or to give him vain expectations, when the case is positively hopeless. It is right to be honest, to state convictions as to the result. But at the same time, it is always wrong to be constantly reminding a patient of the hopelessness of his condition. Having stated the case fairly to him, it is not necessary to be frequently parading the fatal end. It is a bad custom to invite unnecessary confidences; the less the doctor seeks to know, in detail, regarding the private affairs of his patient, the better for both. It must happen sometimes that he becomes aware of the skeleton in the house, but he need not know every particular about it, and had better keep his curiosity to himself, and not seek to find out. It is understood that communications made to medical men are "not privileged," and cannot be withheld on that plea when it is required to know them by legal authorities.<sup>1</sup> At the same time, every man should consider that the patient's secret is still his secret when it is necessarily communicated to the doctor, and that the latter should never divulge it to any one, unless the laws of the country require him to do so.

Medical practitioners of all kinds often make mistakes by talking of the diseases of their patients to third persons. The nature of the disease is the patient's secret, and ought never to be talked about. It is usual for everyone to apply to the doctor to know what is the matter with C. D., and some men like to be officious in stating the case. But the doctor has no real right to divulge its nature, any more than the lawyer has to mention the contents of a will on which he has been engaged. It is necessary for this rule to be strictly observed, and for medical men to refuse to answer such inquiries on all occasions, otherwise the refusal to answer such inquiries in a given case only would be sufficient evidence, in the minds of some persons, to excite the most unjust suspicions.

<sup>1</sup> See *ante*, p. 282 (R. G. G.)

*On Consultations.*

Some men evince a strong objection to consultations: such a course of conduct may appear highly reprehensible. But there are many reasons for the objections; some are caused by the want of faith which exists on the part of the medical attendant in the *bona fides* of the proposed consultant. This has arisen from the breaches of etiquette which are sometimes practised by consultants without hesitation, and as a matter of course. The general practitioner then becomes shy of future confidences, and suspicious of the whole body of consulting practitioners.

These breaches result more often from inattention to the details of etiquette than from any desire to transgress the rules, on the part of the consultant—indeed, some men are too fastidious, and parade their desire to act properly, to an uncomfortable extent; but the laxity of faith does really lead to the serious decrease in the frequency with which consultations are held. Sometimes it inflicts mischief on the public, by delaying a consultation until it is too late to be of service, either to practitioner or patient.

A frequent way in which a consulting practitioner damages his reputation for care is by doing that which we should at first assume to be his undoubted duty to do, viz., appear to have a great interest in the case; and yet the often reiterated expressions—“That it is a most curious case;” “That it is a most interesting case;” “That it is a very instructive case;” “That it is one which he (the consultant) should much like to have before his class, to lecture upon”—have an evil tendency. All such statements are unnecessary, and have an influence which tells against the ordinary medical attendant, who, most likely, has not discovered anything in it materially different from scores of others he has lately seen; he thus looks upon the consultant as a humbug, whilst the patient’s friends may think that his own medical acumen has been at fault. The family adviser soon finds this out, and is not easily persuaded to meet that particular physician again; but the latter gets the chance of consultations with members of the family without the intervention of the family doctor at all, and confidence is broken between them.

Another frequent cause of complaint by the general practitioner is that the consultant conveys to the friends of the patient his desire to know the future course of the case, without troubling



the family doctor to be the medium of communication : if they will let him know how it progresses, he will be glad. This is a more decided breach of faith than the first. The consultant ignores the family medical man who calls him in, and the friends are encouraged to call upon Dr. X., and inform him of the result of the treatment recommended. He criticises the way in which the local doctor is treating the case, or allows the friends to blame him, without defence, in his absence, in a kind of Star Chamber manner. Then follows the reward. The friends consult Dr. X., without the family doctor knowing anything about it, and at least two persons are parties to deception.

The family doctor hears of it sooner or later, and the result is not likely to encourage consultations.

Some men prefer consultations with other general practitioners from a distance, rather than with second-class consulting men, because they do not fear the attempts of the former to detach the patient from his allegiance. Some men, again, will not meet a general practitioner in consultation at all, but stand upon their dignity, and think it would be lowered by such a meeting. Each of these courses has probably resulted from the fact of such men having been deceived by one or other of the class, against whom he therefore acts in self-defence.

Another frequent cause with busy men for refusing or delaying consultations, is the difficulty of arranging a time for meeting, and the length of time such meeting takes up, probably in the busiest part of the general practitioner's day. This is, however, a bad excuse, for whenever a man gets so much work to do (except in the case of epidemics) that he cannot find time for consultations in severe cases, he should diminish his work by raising his scale of fees, and thus let some of his junior brethren, who have little to do, have some of the work which he is unable to perform without injury to himself, or damage to his patients, purely from want of time to fairly appreciate their state.

The following appear to be proper rules to be followed in determining when consultations should be held :—

If the patient suggests it, the practitioner in attendance should agree to it at once.

If the friends suggest it, and the patient does not object, then it should be acceded to.

The ordinary medical attendant should also suggest a consulta-

tion in all cases in which there is obscurity or difficulty of diagnosis, especially if that difficulty at all interferes with the treatment which should be followed.

If there is any doubt as to the end of the case, the medical attendant should suggest a consultation. If the friends of the patient decline it, he has done his duty, unless the case is one in which he absolutely wishes for the advice of some other medical man. In that case, if the friends decline to afford him the consultation, he should ask one of his personal friends to see the case, and assist him in his doubts.

If the patient, or the next friends, desire a consultation, no man ought to object to the same, unless there are very special reasons why a consultation should not be held : the principal of these being the complete absence of obscurity in the case, and the chance of increasing any present excitement in the patient, or the certainty of producing it.

It is also a wrong principle for the medical attendant to suppose that he has shifted the responsibility of treatment upon the consultant. He ought entirely to coincide with the treatment that is about to be pursued, and be responsible for it, or else retire altogether from the management of the case.

The daily medical attendant must be the commander-in-chief, and it is contrary to the interests of the patient for him to be fettered in any way as to the future treatment, and he must not allow the stranger to be held responsible for the result.

The choice of the consultant rests with the medical man in attendance. If the patient, or his friends, have suggested the consultation, he will probably ask them whom they would wish to have to meet him. If they should suggest one in whom he has not confidence, he must be careful not to bear false witness, and, if possible, to accept him ; objection will do more harm than good to the objector, unless the objections are based upon very substantial foundations.

It is usual for the ordinary attendant to request the consultation, and state the nature of the case, in a note to the consultant, and to ask him to name a time for the meeting, and no appointment should be made without some such communication. It is unwise, and somewhat irregular, for the consultant to visit a case without making this arrangement, if it can possibly be done. He should take care to ascertain that the time named is a possible

one for the family adviser to meet him : if it is not so, he ought not to give any opinion, or even to see the case, in the absence of the latter, unless his consent has been obtained. If, on his arrival, the consulting practitioner finds that the ordinary adviser has not reached the rendezvous, he should wait a reasonable time, asking general questions only regarding the patient, and carefully avoiding the expression of any opinion regarding his condition. If the family doctor does not arrive, he should, after a time, proceed to examine the patient, carefully avoiding the expression of any opinion as to his state, and the treatment he has undergone, or may require for the future. If the time approaches at which it becomes necessary for the consultant to depart, and the ordinary medical attendant is still absent, he should leave a letter containing his opinion of the case, as far as he has been able to make out, and the treatment he suggests. This should be at once forwarded to the absentee, whilst the consultant should take care to avoid any expression which could be at all contorted into disapproval. It is found, in practice, that differences of expression which may have been used by the consultant are generally taken up by some one about the patient, and often used as evidence of imperfect, if not improper, treatment on the part of the regular adviser. These differences of expression must, necessarily, arise when there has not been a previous history furnished ; they are often immaterial to the proper management of the case—slight differences of idiom, rather than differences of opinion—but they are often dwelt upon by outsiders, and lead to injurious reflections upon the previous treatment of the case. They are sometimes made of vital importance by those who may have a personal animosity against the doctor, and are brought forward as proofs of incompetency, whenever it is possible, to injure his reputation. This is often done by society, in the best possible faith. They believe they are benefiting their fellow-creatures by pointing out the doctor's shortcomings ; they blast a reputation as easily as they blow dust from a chimney ornament.

A general practitioner must always be very particular in keeping his appointment, and if prevented, by unavoidable circumstances, from keeping it, he should forward a note of explanation to the place of rendezvous, with an account of the case, and the treatment he has pursued. It is, however, a venial offence for the family adviser to be absent, because he usually combines



the practice of midwifery with his other duties, and he may, therefore, be called upon to change his course at any time. This excuse is not allowed to the consultant. Having made an appointment, the urgency of another case to which he may be summoned is no excuse for breaking his first engagement, unless he can alter it without inconvenience to the family medical man.

The meeting having been brought about, it is usual for the consultant to have some conversation about the case before seeing it; he then follows the ordinary attendant into the room, and is introduced to the patient, and at once commences his examination. If the consultation is one in which more than two are engaged, it is usual for the senior to examine the patient first, and the youngest or least-noted last. They then withdraw from the room, and if it is advisable to be very particular, it is best for the family doctor to be the last to leave it. It may lead to distrust, or to some disagreeable consequences, should he return to the room alone. Some consultants make a custom of visiting the patient again after the treatment has been decided upon, for the purpose of explaining the plan which is to be followed. This ought to be unnecessary, unless the ordinary adviser wishes it. It is the duty of the latter to see to all details, and its observance only increases the consultant's opportunity of acting without the intervention of the family adviser. Slight differences of idiom, or details of treatment, will be magnified by some one, and may be used for the purpose of depreciating either party. It is better, therefore, to avoid the custom, where practicable.

When the consultation is held downstairs, after the patient has been examined, if there are more than one consultant, the junior should give his opinion first, and the senior sum up when the nature of the case is made out, and the course to be followed has been decided upon. The senior gives his opinion to the friends, and marks out the general outline of treatment, distinctly stating that the family adviser will inform them of the details.

It is not right to discuss questions of treatment, in the presence of patients, or even of their friends; it is imprudent to speak of their diseases, and the feelings of patients must at all times be duly considered. It may be even necessary, in deference to those feelings, that the rules of etiquette have to be violated; but this should be on strong grounds only, and can only be justified by good reasons.

A consultant ought not to hold any further communication with the patient, except through the medium of the ordinary medical attendant. This rule is frequently broken by the most eminent men in the profession; the public are adverse to it, but an adherence to it would materially increase the frequency of consultations, and do away with many of the suspicions of unfair advantages, which lead the ordinary medical man to object to consultations, when he considers them uncalled for. The difficulty of diagnosis is, for instance, not often recognised as a reason for consultation, whilst, in reality, it is the most reasonable one that can be urged; yet, were an ordinary adviser to be reported as frequently requiring the assistance of Dr. A., or Mr. B., to cases of difficulty which he did not clearly make out, it would certainly tend to lower his reputation for ability, and do him serious harm. Unless the custom can be altered, and general practitioners get greater confidence in the good faith of the consultant, it is certain that the difficulty of diagnosis will not often lead to consultations. It must not surprise consultants, therefore, that they are privately objected to, because it is known that they are lax in their good faith upon this point.

It is perfectly legitimate for a man to refuse to meet another, if it is notorious that the other disregards the rules of etiquette. Nothing tends so much to quackery as this disregard, and the man who vaunts his liberality in this direction, and talks about free trade in physic, is most likely not many steps removed from the most notorious of the tribe of quacks.

In every consultation, it is absolutely requisite that there be mutual respect in the bearing and manner of both. Some men entirely forget this, and try to render the other party to it more or less uncomfortable by ignoring his opinion altogether. There should always be candid allowances for differences of opinion, for such differences are sure to be met with between men of different ages, and different schools of thought and teaching. In the present infrequency of consultations it often happens that such have been sought for by friends, really in consequence of a want of confidence in their ordinary adviser. The consultant should not allow blame to be wrongfully cast upon him, unless decided mischief has resulted from ignorance of the nature of the disease, or actual neglect in the care of the case; and even when these latter are evident, it is not for the consultant to suggest them.

Different ideas regarding treatment are not sufficient causes for allowing blame, because on this point the highest authorities differ. It may be also recollected that juniors always require some natural protection against seniors, and that it is only right for the latter to be courteous in expressing a difference of opinion, whilst it becomes the former to express their own with diffidence and respect, not in a loud and dictatorial manner, which is extremely distasteful to the refined gentleman; a character which every member of the medical profession ought to possess. It is never right, necessarily, to wound the pride and vanity of anyone, and, whilst it is the duty of the consultant to protect a patient from the consequences of actual ignorance and incompetency, a difference in opinion as to the treatment to be pursued is not a reason for destroying the confidence which ought to exist between doctor and patient. It is not a difficult matter, at the present day, to get a complete difference of opinion as to the treatment of a particular case, from men of equal age and equally high standing, because they have been brought up in different schools, and have followed different trains of thought. Each may conduct his patient to a successful end. This is no reflection against the knowledge or the ability of the adviser, for in the majority of instances the adviser is, as it were, only a pilot in a vessel sailing to a distant port, and whether the passenger starts from Southampton or Liverpool, it makes but little difference in the length of the voyage, provided the vessel be seaworthy. The pilot's knowledge of one course may be greater than his acquaintance with the rocks and shoals on the other, and everyone would allow him to choose the way he knows best, unless accompanied by another better acquainted with the intricacies of the passage. When differences of opinion do arise which cannot be amalgamated, it is best to arrange another meeting, to which a third party should be summoned (the third party being agreed to by both), and his decision should guide the differing doctors in the course to be followed, and regulate the communications to be made to the friends of the patient. This arrangement would altogether prevent the disagreements which often follow from men looking at an object with different powers of vision, and would smooth away many difficulties which may otherwise arise.



*On Quacks and Quackery.*

There are numerous quacks who are legally qualified members of the profession, and who do much to bring its fair fame into disrepute.

It is proposed to consider the means we have at hand for recognising such persons, and to enable us to distinguish those who should not, as a rule, be accepted as consultants.

The most numerous in the list are the advertising quacks. Advertisements are, very properly, repudiated by the whole profession of medicine, but a long list of men manage to evade the letter, but enter into the spirit, of the thing. The tendency pervades all ranks. Thus, paragraphs are inserted in the papers that Dr. Z. has been in daily attendance upon the Duke of Y. The paragraph states that, under his judicious treatment, the noble duke is rapidly recovering from his late severe illness; again, that a consultation has been held with the family physician, at which the celebrated Dr. G. assisted, and that, in the opinion of the great doctor, the noble duke may recover, if, &c., &c.

Another ignoble form of advertisement which the rank and file adopt, is that by which country practitioners publish accounts of extraordinary cures, in local journals, or narrate methods by which wonderful results have been obtained, without giving the particulars of practice. These methods are often adopted by injudicious friends for the purpose of trumpeting the doctor's fame, and it is a positive duty for every medical man to repudiate them as soon as ever they come to his cognizance, otherwise he accepts the responsibility, and the consequent reflections which must be made upon him by his neighbours.

There is not very much difference between these cases and those which appear in the various medical journals, and which are written by juvenile medical authors, quotations from which are afterwards advertised in the general press. These publish for the purpose of obtaining practice, to bring forward their names before the general public, not to inform the medical world of the results of practice. These publications are for the public, and not for the profession, for practice and not from it. Such writers are as much advertisers as any of the Morison's pill tribe, or others outside the pale of the profession.

Another class of quacks are those who pretend to possess secret

remedies, who publish modes of practice, yet conceal the real secret of success. This is done in various ways, such as condemning a certain kind of treatment, in their writing, and yet adopting it, in their practice; the condemnation of some well-known and effectual plan being used for the purpose of attracting patients: the system adopted in the cure being, however, a secondary consideration altogether, their idea being, "Get patients, honestly, if you can, but get patients."

Some men of considerable pretension quack in another manner; they parade their qualifications upon every occasion, and in a most undignified manner, so much as to lead some men to consider them false, and treat them as if they were so. Then, again, some men strive to ride upon the back of popular favour by writing against the profession itself, and publish works such as the "Fallacies of the Faculty," and, without knowing it, at once brand themselves as quacks.

Another plan of obtaining professional notoriety is publishing the time and place at which the celebrated man may be consulted. Thus, in the second volume of the *Lancet* for 1847, at folio 687, is a good hint at the way in which a man may advertise himself so as to rank with the quack doctors of old. The medical press contains abundance of evidence that advertising is not at all uncommon. Circulars and cards of various kinds and sorts are sown broadcast about the country, thrust down areas, or put into the letter-boxes of strangers. There are also accounts of dispensaries and special hospitals for the most general of complaints, in which the qualifications of the medical officers, with their private addresses, are most fully set out, and their skill vaunted in the most unblushing manner, these very places being obviously promoted by Dr. A. and Mr. B. for their own especial benefit and pecuniary advantages, whilst they quite ignore the honour of their profession.

A recent plan of evading the ordinary rules of ethics with regard to advertising, is that which is adopted by some medical men of sending round circulars to the subscribers to charitable institutions, requesting their votes on behalf of A. B., who is most grievously afflicted; then follows a sensational account, which is signed by a particular physician or surgeon, the qualification and the address of the medical man being paraded before the charitably disposed with most wondrous effect. The circular reaches those

who are kind-hearted, and who can probably afford to pay good fees to those they consult. But this course is as much a quackish one as that of those who adopt the "cure for cancer" and "manly vigour" style of advertising, and it ought to be repudiated by all high-minded men.

Sound medical ethics are opposed to quackery of every kind. Men who neglect the standard rules should always be looked shy upon, and studiously avoided by those requiring the assistance of a consultant.

The custom of testimonial-giving is another means by which the spirit of advertising is reached. A man gives a testimonial in favour of some particular individual, or in support of some medicine, or of some article of general consumption, and in which the qualifications of the giver, and his place of residence, are paraded before the public, and advertised in the pages of every newspaper. This plan is opposed to good taste, and should be repudiated. The testimonial-givers are of the same type as those who advertise hydropathic and other pseudo-medical establishments, and speak in grandiloquent language of the skill of the medical men attached to them. These establishments are commercial ventures, as well as medical establishments, and should scarcely be managed by medical men. The same applies to those who advertise medicated baths, electric agencies, and quack medicines, and they should not be tolerated by a learned profession.

Canvassing for appointments, in which the canvasser himself sets forth his wonderful ability, is a kind of quackery of a less pretentious character, but is advertising, and does not tend to raise the profession in the estimation of the public. The printed lists of testimonials in favour of the candidate are injurious to him, as well as to those who give them—injurious, that is, in a moral sense. The appointments to general hospitals and dispensaries in which the work is performed gratuitously ought to be left in the hands of the staff itself and the managing committee, and never to the general body of governors. It would advance the interests of the institutions themselves if this plan of advertising were resolutely put down; for the method adopted of parading a man's supposed superiority, in a book of testimonials, in which Sir F. W. and Sir W. T. speak in rapturous terms of Dr. Fitznoodle, whilst everybody among his private friends knows him as a very slow coach indeed, and is



surprised to find his testimonials equal to those of Dr. A., who carried off several exhibitions at college, and was well known in the profession as an able man. How is it possible, under these circumstances, for the public to judge which is the best man to elect to the vacant post? It therefore often happens that the man who has the most brass, and the most unscrupulous friends, gains the day over modest talent and special fitness. Such kind of advertising is most derogatory to the best interests of medicine, and therefore of the public welfare, whilst it lowers the practice of medicine to the level of a trade. It is evident that the most honourable course would be for the appointment to rest with the committee of management, advised by their staff, and that it is the duty of those who have the opportunity to endeavour to get the rule, under which such appointments are made, altered from that which now places such election in the hands of the general body of governors, into one more in accordance with the way proposed, as one more suitable to the interests of all concerned.

There is a rarer plan of advertising, not now so much practised as in times gone by, viz., by communicating to the coroner suspicions of malapraxis—a man thinks to build his own fame upon the ruin of his neighbour's. This course is one that no high-minded man could adopt, and should be scouted, unless the communicator has the clearest evidence of the truth of his statements, and the certainty of evil intent on the part of the person complained of. It should be fully understood that the law does not inflict punishment for errors of judgment, and that which the law does not do, surely a neighbour ought not to do, and no medical man ought to volunteer as a witness against another in such a case. His communications to the coroner, must be, therefore, only in cases in which foul play is suspected, not when the skill and attention of the medical man is only to be called in question. Such things are not cases for inquiry before a coroner's jury, at the instigation of a rival practitioner.

It is also *contra bonos mores* for any medical man to be particular in his inquiries after the patient of another; much quackery takes place in this way, in a private manner. For a man to insinuate that he knows a good deal about such an one's case, or that he should have himself treated it differently, is a common but a disgraceful plan. Innuendoes of this kind are often most injurious to the reputation of men innocent of wrong-doing, and cannot be

too much reprobated. They are the acts of quacks, and should be eschewed by all men. The slightest word regarding another man's patient is often quite misunderstood by laymen, and becomes so twisted and perverted that the original author could not recognise it again; good friends may thus be separated, and much mischief may happen, even when not intended. When a man gives an opinion regarding a case which he has not seen, and about treatment detailed to him second-hand, and the reasons for which he cannot possibly be acquainted with, he must do it on false foundations: it is urgently necessary for men, when asked to give opinions about cases which are not under their care, to resolutely decline to commit themselves at all, and so avoid the possible chance of offence, whilst if inquiries are instituted by a medical man about another's case, he may be safely written down "quack."

There is another private kind of advertising, which is also injurious to the best interests of the profession—it is that of giving the shilling of the midwifery fee to the nurse in attendance. This course makes the nurse think that she has a larger amount of influence than is probably the case, and it encourages her to retail gossip to the injury of the man who will not condescend to such meanness, whilst it certainly does no real good to the briber, for the nurse is only able to influence the weak-minded and the indolent, and the artifice is soon seen through by the wise and prudent.

Some medical men advertise themselves by calling upon the new-comers in a given neighbourhood, and leave their cards, with qualifications and address inscribed, just like the butcher and baker. This ought to be put down; it is contrary to good manners. No man has a right, by reason of his professional status, to call upon his neighbour unless he has been sent for, and people who are worth attending do not usually send for the man who prostitutes his calling in such a manner. If a medical man calls upon a stranger, he ought to have a letter of introduction from a mutual friend, and then his call should be as a friend, and not for the purpose of parading his professional qualifications, and offering his services when they may be required. A still more objectionable plan is for a man to employ his wife for such a purpose. A medical man's wife who shoots pasteboard at every new-comer's door is a walking advertise-

ment, doing much injury to the general character of the profession. The sooner this very common plan is done away with the better. It is still quite usual in some districts. The most respectable family medical men have given up the custom. It is an evidence of a quackish tendency, and an honourable-minded man should not in any way lend himself to such a course.

In publishing reports of cases and particular methods of treatment, it is important to avoid a quackish tendency of blowing one's own trumpet. Junior medical men often fall into this error, and parade the results of their form of treatment in other ways than in the medical press. This plan should be emphatically repudiated, and although it would not perhaps be prudent to go so far as was done in Paris, in 1851, when Dr. Pelleteau, physician to "Bicêtre," was suspended for having sent to *La Presse* an account of his own successful treatment of disease, yet, a little more decided expression of disapprobation at the egotistical publication of cases and particular plans of treatment, in non-medical journals, would be only doing justice to the offenders. It encourages men to blow their own trumpet, instead of leaving that task to be performed by others, whilst true greatness and correct feeling will always refuse to adopt such a course.

In conclusion, we may suggest that it would be a great advantage for all cases of disagreement between members of the profession to be brought before a tribunal, consisting of the members of the profession belonging to a particular district, such as, perhaps, the local branch of the British Medical Association, and for the disagreeing members to consent to abide by the decision of the majority, rather than that disagreements should be made public, and become public scandals, to the injury of the profession, and the serious depreciation of their moral power. Such assemblies would be courts medical, and if presided over by gentlemen, would be of great advantage to the profession.

## *Sec. II.—Plain Instructions as to the Execution and Attestation of Wills.*

So constantly does it happen that men postpone, from day to day, the most important duty of arranging for the disposal of their worldly goods and possessions after their decease, until warned of



their neglect by some serious illness, or the near approach of death, that a medical man may occasionally find himself called upon to draw up a will for a patient, where the attack has been sudden, and legal assistance is not readily procurable. In such cases, if the medical attendant, to whom the request is made, conscientiously believes that, from disease or any other cause, the patient is not fully the master of his own acts, he should at once refuse to mix himself up in any way with the transaction, as, otherwise, he may make himself a party to an illegal act, and cause grievous wrong to the survivors, or, at least, involve them in expensive litigation.

Where, however, the patient, although, perhaps, enfeebled by the disorder from which he is suffering, is of sound disposing mind and memory, the medical man should listen attentively to his instructions, and not take down the actual words of the testator from his lips, but endeavour to get at his real purpose and intention, and then write down his wishes, in clear and simple language.

Any instrument, whatever may be its form, from which the intention of the maker can be gathered, that it is to affect the destination of his property after his death, will, if properly attested, be held testamentary. No particular form or phraseology is required, nor will any degree of technical informality render the will void. Technical language had better be avoided altogether, for such words will be interpreted according to their technical import, and the incorrect use of one such expression, by a person not thoroughly well acquainted with the precise technical force of legal formulæ, may render the intention of the testator obscure, and give rise to much difficulty in the interpretation of the will.

In drawing up a will, it is advisable, of course, to use ink, and paper or parchment, if the same are readily available, but a will may be written upon any substance, and with any material. Thus, for instance, a will written in pencil, or with a piece of chalk upon a slate, would be valid. The law says that every will must be in writing, but a will, the body of which is printed from type, or which is partly written and partly printed, satisfies the statute.

A will may be written in any language, and either in words at length, or contracted, or in figures, so that the testator's wishes are clear and unambiguous. It need not be written continuously. It may have blank spaces in the body of it, or it may be written

on several sheets, and any written document in existence at the time of making the will may be incorporated with, and made to form part of the will.

Even if a medical man be not frequently called upon to draw up a will, yet it is far from unlikely that he may be occasionally requested to advise a patient as to the execution of a will, and to subscribe his name thereto as an attesting witness. In such cases, a knowledge of the following plain rules may be found useful:<sup>1</sup>—

1. Every will must be signed, at the foot or end thereof, by the testator, or by some other person, in his presence, and by his direction.

2. The testator's signature had better be placed underneath the last line of the will, but it is duly affixed if it be so placed as to make it apparent, on the face of the will, that the testator intended to give effect, by such his signature, to the writing signed as his will, nor is any such will affected by the circumstance that the signature does not immediately follow, or is not immediately after the foot or end of the will, or that a blank space intervenes between the concluding word of the will and the signature; or that the signature is placed among the words of the testimonium clause, or of the clause of attestation, or follows, or is after, or under the clause of attestation, either with, or without a blank space intervening, or follows, or is after, or under, or beside the names, or one of the names of the subscribing witnesses; or that the signature is on a side or page, or other portion of the paper or papers containing the will, whereon no clause, or paragraph, or disposing part of the will is written above the signature; or that there appears to be sufficient space on, or at the bottom of the preceding side or page, or other portion of the same paper on which the will is written, to contain the signature. No signature operates, however, to give effect to any disposition or direction which is underneath, or which follows it, or which was inserted after the signature was made.

3. Where a will is in several parts or sheets, each part need not be signed by the testator, but the will, so composed, must be signed and attested at the *end*, and all the parts must be together, though not necessarily attached, when the signature is affixed. As a matter of precaution, it is advisable that the testator and

<sup>1</sup> See, generally, Inderwick's "Law of Wills." London, 1866. Hayes and Jarman's "Concise Form of Wills, with Practical Notes." London, 1869.

witnesses should sign, or put their initials to the bottom of each page, and that the number of sheets should be referred to in the attestation clause.

4. The mark of the testator (whether he can or cannot write) is a sufficient signature, even though his name be not affixed to the mark. His hand may be guided by another person. He may sign under an assumed name, or by the impression of a stamp habitually used by him for the purpose of signing documents, or by initials; but not by a seal, or by tracing with a dry pen over a signature previously written.

5. The testator must, at the time of signing the will, know and approve of its contents; and in the case of a blind or illiterate person, it is highly desirable that the will should be read over to him in the presence of witnesses.

6. The testator must sign his name before either witness signs, and his signature must be seen by the witnesses; but the witnesses need not know that the document is of a testamentary character.

7. Any person, even one of the attesting witnesses, may sign for the testator, provided that the signature be made by his authority, and in his presence; and the person so signing may sign either the testator's or his own name, or may merely make his mark.

8. The signature must be made *or* acknowledged by the testator, in the presence of two or more witnesses, present at the same time. If, therefore, both witnesses be present when the testator signs, it is not necessary that he should make any further acknowledgment of his signature.

9. The testator need not declare, in express words, that the signature is his, but he may acknowledge it by gestures, or by other acts, at the time of attestation, and an acknowledgment will often be assumed from attendant circumstances.

10. A will is not invalid if the testator deceive the witnesses as to the nature of the document, provided that he duly acknowledge the fact that it is his signature appended thereto.

11. The witnesses must attest and subscribe the will, in the presence of the testator. It is not necessary that they should also sign in the presence of each other, but it is advisable that they should do so, in order that each may be a witness that all the formalities required by law have been complied with.



12. A witness may sign by mark (whether he can or cannot write), or by initials ; and his signature will be good if, intending to write his own name, he writes a wrong one, by mistake, or if he writes words sufficient and intended to identify himself as the person attesting, or if his hand be guided, or if a third person sign for him, while he holds the pen at the top, but not if his name be written for him by a third person, at his request, and he makes no mark, or if he traces over with a dry pen, or makes some slight addition to, or alteration in, a signature written before the testator signed, or, in any other way, simply acknowledges a previous subscription.

13. The testator must, when the witnesses subscribe their names, be in such a position that he can, if he wishes, although he need not actually, see them sign. He must not have his back turned to them, or be shut out from their view by a curtain, or a screen, or in any other mode. If the witnesses retire into an adjoining room, for the greater convenience of affixing their signatures, they must take care to remain in such a position as to be visible to the testator. In the case of a blind testator, the witnesses must, when in the act of signing their names, be in such a position that the testator, if he were not blind, could see them affixing their signatures. The testator must not be in a state of insensibility when the witnesses sign, nor is it sufficient that the attestation be in his presence, if it be without his knowledge.

14. Any person to whom, or to whose wife or husband, any legacy has been left, by will, is competent to be an attesting witness to the will, but, in such case, the legacy becomes null and void, so far as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person, or wife, or husband. A creditor may, however, be an attesting witness to a will, without losing his claim against the testator's estate, although such estate may be charged, by the will, with the payment of debts. A legacy, annuity, or residue bequeathed by will is not affected if the person to whom it is bequeathed attest a codicil to the will, even though the codicil, by revoking legacies given by the will, indirectly increases the amount of the residue. So, a witness to a will may take under a codicil. The subsequent marriage of a witness to a person entitled to the benefit of a devise or bequest in the will does not render such bequest null and void.

An executor is competent to be an attesting witness to a will.

15. No particular form of attestation is necessary. The mere subscription of the names or marks of the witnesses is sufficient, without any addition ; but it is always most desirable, in order to facilitate probate, and for other reasons, that a formal attestation clause should be added. The position of the clause is immaterial, but the witnesses should sign at the foot thereof. The following, or a similar, memorandum of attestation may be employed :—

“Signed by the testator, A. B. [*or* signed by C. D., in the presence, and by the direction of, the testator, A. B. ; *or* signed by the testator, A. B., who acknowledged his signature], in the presence of us, present at the same time, who, at his request, in his sight and presence, and in the presence of each other, have attested and subscribed the same.”

16. Every obliteration, interlineation, or other alteration made in a will after the execution thereof, must be duly executed and attested, either in the margin, or on some other part of the will opposite or near to such alteration, or at the foot, or end of, or opposite to a memorandum referring to such alteration, and written at the end, or some other part of the will. The following, or a similar, memorandum may be employed :—

“Memorandum, that the interlineation between the  
and            lines in the            page of this, my will, and the  
alteration in the            line of the            page thereof, and  
the obliteration in the            line of the same page, were  
made according to my desire. As witness my hand, this  
day of            , 18    .”

This memorandum must be signed by the testator, and subscribed by two attesting witnesses.

It is highly desirable that the same formalities should be observed in the case of an alteration made before the execution of the will, as all unattested alterations are presumed to have been made after execution.

17. Every codicil to a will, and all testamentary papers whatsoever, must be executed and attested in like manner as is required for the execution and attestation of a will.

*Sec. III.—Forms.**I. Deed of Co-partnership between two Medical Men.<sup>1</sup>*

THIS INDENTURE, made the       day of       , 18       , between A. B., of       , in the county of       , &c., of the one part, and C. D., of       , in the county of       , &c., of the other part: WHEREAS the said A. B. has, for many years, carried on and practised the profession of a surgeon, apothecary, and accoucheur, in the said town of       , in the county of       , and has agreed with the said C. D. to admit him into partnership, in consideration of the payment by him, the said C. D., to the said A. B., of the sum of £       , by way of premium, and also the sum of £       , being one-half of the present value of the surgical instruments, drugs, bottles, and other things belonging to the said A. B., and provided by him for carrying on the said profession or practice, and upon the conditions hereinafter mentioned: NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the said sums of £       and £       (making together the sum of £       ) paid by the said C. D. to the said A. B., upon the execution hereof (the receipt whereof the said A. B. doth hereby acknowledge), each of them, the said A. B. and C. D., doth hereby, for himself, his heirs, executors, and administrators, covenant with the other, his executors and administrators, that they, the said A. B. and C. D., shall and will be partners in the profession or practice of surgeons, apothecaries, and accoucheurs, for the period, and subject to the stipulations, provisions, and conditions, hereinafter expressed and contained, that is to say:—

1. The said partnership shall continue for the term of       years from the date of these presents, if the said A. B. and C. D. shall so long live.

2. The firm of the said partnership shall be       .

3. The business of the said partnership shall be carried on at the present surgery of the said A. B., at       , as aforesaid, or at such other place or places as the said partners shall hereafter determine.

4. Both of them, the said A. B. and C. D., will, at all times, diligently and faithfully employ themselves in and about the

<sup>1</sup> A 10s. stamp required.



business of the said partnership, and use their best endeavours to promote the interests of the same.

5. Neither partner shall accept any professional appointment or office, without the consent of the other partner, and the whole of the salary, remunerations, or other profits arising from such office or appointment, shall be held, by the partner accepting the same, for the benefit of the partnership.

6. Neither partner shall, during the partnership, engage in any other trade, profession, or business, without the consent in writing of the other partner.

7. Neither partner shall take, hire, or dismiss, any assistant or servant engaged in the business of the partnership, without the consent of the other partner.

8. Except where any particular patient or family shall expressly require the attendance of the said C. D., the said A. B. shall have the choice of attending such of the patients consulting the firm as he shall think proper, and where either partner shall attend any patient or family, the other partner shall not in any manner interfere with him in such attendance, or, except in his absence, or at his express request, attend such patient or family.

9. Each partner shall, during the partnership, provide for himself all such horses and carriages as shall be necessary to enable him effectually to attend to the business of the partnership, and shall maintain and keep the same at his sole expense.

10. All professional business by either partner shall be carried on for the benefit of the partnership, and all pecuniary presents and gratuities (except legacies) from patients, and all other professional emoluments whatsoever, whether ordinary or extraordinary, which may be received, from time to time, by the said partners, or either of them, shall be treated as profits of the said partnership business, and be accounted for accordingly; *provided*, nevertheless, that it shall be lawful for either of the said partners to take for himself any apprentice or pupil, or any patient or patients, to board in his house, and the fees, premiums, salaries, or profits to be received in respect of such apprentice, pupil, patient, or patients, shall belong exclusively to the partner taking the same, for his private use, and shall not belong to the partnership, or be matter of partnership account.

11. The partners shall be entitled to the net profits of the partnership business in the shares following, that is to say, the

said A. B. shall be entitled to two-third parts thereof, and the said C. D. to one-third part thereof, during the first three years of the partnership, and afterwards, upon the payment by the said C. D. to the said A. B. of the further sum of £ , the said partners shall be entitled to the said net profits in equal shares.

12. The rent of the present surgery, and the rent of any other surgery or place where the said business shall, for the time being, be carried on, and the costs of repairs and alterations, and all rates, taxes, payments for insurance, and other outgoings whatsoever, in respect of the same, and the wages, remuneration, and maintenance of all assistants or servants employed in the said business, and the expense of providing surgical instruments, drugs, and other articles necessary for the purposes of the said business, and all other monies to become payable on account of the said business, and all losses which shall happen in the same, shall be paid out of the capital of the said partnership, and the profits arising therefrom, or, if the same shall be deficient, by the said partners, in equal shares.

13. The bankers of the partnership shall be the Banking Company, at , or such other bank as the partners shall mutually agree upon, and all monies belonging or payable to the partnership shall be paid into the said bank, to the credit of the partnership account there.

14. Each partner shall be at liberty to draw, out of the gains and profits of the partnership business, the sum of £ per month, for his personal expenses, and no more, and in case the sums which shall be so drawn out by either of the partners shall, at the taking of the half-yearly general accounts hereinafter provided for, be found to exceed such partner's share of the gains and profits of the said business, then such partner shall be considered as a debtor to the partnership, for the excess, and shall repay the same, forthwith.

15. In the event of either partner being disabled or incapacitated, by illness, or any other cause, from attending to the partnership business, and taking an active and personal part therein, for more than one calendar month, at any one time, the other partner shall be paid, at the next and at any subsequent division of profits, out of, and previous to any division of such profits, an allowance of per day, for every day after the expiration of the said month, and during such a time as such incapacity or disability shall continue.

16. Proper books of account shall be kept by the said partners, and full and correct entries immediately made therein of all such matters, transactions, and things as are usually entered in books of account kept by persons engaged in the business of surgeons, apothecaries, and accoucheurs, including all attendances upon, and medicines supplied to, patients of the partnership, and all such monies, fees, payments, salaries, and gratuities as are hereinbefore provided to be treated as part of the profits of the said business, and the said books of account shall be kept at the surgery, or place of business for the time being, of the partnership, and each of the said partners shall have free access to inspect and examine the same, and take copies of, or extracts from, the same, at pleasure.

17. On the first day of January, and the first day of July in every year, or within seven days after each of such days (beginning with the first day of            next), a general account shall be made and taken, by the said partners, of all the receipts, payments, engagements, and transactions of the said partnership, and of all such other matters and things as are usually comprehended in general accounts of the like nature, taken by persons engaged in the business of surgeons, apothecaries, and accoucheurs, and the said general account shall, immediately after the same shall be made and taken, be written into two books, and be signed, in each such book, by each of the said partners, and after such signature, each of them shall keep one of the said books, and shall be bound by every such account, except that if any manifest error be found therein, by either of the said partners, and signified to the other of them, within three calendar months after the same shall have been so signed by both of them, such error shall be rectified.

18. After each such general account shall be signed, in the manner provided by the last preceding article, the net profits of the said partnership business, appearing thereby, after providing for all outgoings and expenses of the said partnership, shall be divided between the said partners, in the proportion hereinbefore mentioned in that behalf.

19. Either partner shall be at liberty, on, or at any time after the        day of        , to retire from the partnership, by giving to the other partner, or leaving for him, at the surgery at which the said business shall, for the time being, be carried on, twelve calendar months' notice, in writing, of his intention in that behalf, and at the expiration of such notice, the partnership shall deter-



mine. The said A. B. shall, as senior partner, have the pre-option of continuing or retiring from the said practice. If such notice shall be given by the said A. B., and the said A. B. shall elect to continue, then, and in such case, the said A. B. shall, at the expiration of the twelve months mentioned in the said notice, pay to the said C. D. all monies received from the said C. D., by way of premium or purchase-money, under these presents, together with a sum for compensation for the loss of the partnership practice and effects, to be ascertained and paid as hereinafter is provided. If such notice shall be given by the said A. B., and the said A. B. shall elect to retire, and the said C. D. shall elect to continue, then the said C. D. shall pay to the said A. B. a sum for compensation as aforesaid, in like manner to be ascertained and paid. If such notice shall be given by the said C. D., then, according as the said A. B. shall elect to continue, or shall elect to retire, a sum for compensation as aforesaid, to be ascertained and paid as aforesaid, shall be paid by one of the said parties to the other of them, as the case may be. If, on the expiration of such notice, the practice be continued by neither party, no compensation shall be payable by either, and if the practice and partnership effects be sold to a third party, the net proceeds of the sale shall be divided between the partners, in the proportion in which the profits for the time being shall be divisible. The partner retiring in consequence of such notice, shall not, at any time after the expiration of such notice, without the consent in writing of the other partner, directly or indirectly practise, or carry on the profession or business of a physician, surgeon, apothecary, or accoucheur, in aforesaid, or within miles thereof; and if he shall so practise, shall pay to the other partner, his executors or administrators, the sum of £ for every month during which, or any part of which, he shall so practise, by way of liquidated damages. So soon after giving the said notice as possible, it shall be referred to arbitration, as hereinafter provided, to ascertain what compensation, as aforesaid (if any) shall be made to either of the partners, by virtue of this article.

20. If either partner shall die, or become permanently incapacitated, by illness, or otherwise, from following the duties of his profession, the entire goodwill of the said practice and the partnership effects shall thereupon become the absolute property of the other partner, who shall make to the retiring partner, or to the

legal representatives of the deceased partner, as the case may be, such payment for the share of such retiring or deceased partner in the goodwill of the said practice, and the said partnership effects, as shall be determined by arbitration, as hereinafter provided, and such retiring partner, or such representatives, as aforesaid, shall use all reasonable exertion to forward the interests of the continuing or surviving partner, and shall do no act whatsoever which may tend to his injury. If any question shall arise as to the permanent incapacity of either partner, as aforesaid, the same shall be referred to arbitration, as hereinafter provided. A partner retiring under this article shall be subject to the same restrictions as to practice in           aforesaid, or within           miles thereof, and to the same penalties, if he shall so practise, as are imposed upon a partner retiring under the last preceding article.

21. Any sum awarded as compensation to either partner, or to his representatives, as herein covenanted, shall be paid to him or them, by the surviving or remaining partner, within twelve calendar months after the award shall have been published.

22. If either partner, at any time during the continuance of the said partnership, shall wilfully conceal from the other the receipt of any monies, profits, fees, salaries, or gratuities, as hereinbefore mentioned, and shall wilfully neglect to account for the same, or shall become bankrupt, or compound with his creditors, then, and in any of the said cases, it shall be lawful for the other partner, within fourteen days after knowledge or notice of such event having happened, to give notice, in writing, of his desire that the partnership shall cease, and immediately on such notice having been given, the said partnership shall cease and determine, and thereupon the partner receiving such notice shall be subject to the same restrictions, as to practice in           aforesaid, or within           miles thereof, and to the same penalties, if he shall so practise, as are imposed upon a partner retiring under article nineteen of these presents; and the accounts shall be taken and made out in manner provided by the article next hereinafter contained, under the sole superintendence of the partner giving such notice, as aforesaid, but the question as to the amount of compensation (if any) to be paid by such partner to the retiring partner, for the determination of the partnership, and the loss thereby occasioned, shall be referred to arbitration, as hereinafter provided. On the dissolution of the partnership, under this article, each partner shall join in giving due notice of the dissolution.

23. Upon the expiration or determination of the partnership, a full and general account, in writing, shall be taken of all the monies, stock-in-trade, debts, and effects, then belonging or due to the partnership, and of all monies and debts due by, and of all the liabilities of, the partnership, and a just valuation shall be made of all the particulars included in such account which require and are capable of valuation, and all the said monies, stock-in-trade, debts and effects shall, after discharging or providing for the monies and debts due by, and all the liabilities of, the said partnership, be forthwith divided between the said partners, or their respective executors or administrators, in the proportions in which, under the articles hereinbefore contained, they are, or shall, or may, at the time of such dissolution, be entitled to the net profits of the said business, and the executors or administrators of a deceased partner shall have full power to concur in such division, and to bind the persons beneficially interested in his estate, thereby.

24. If any dispute, question, difference, or controversy, shall, at any time, arise between the parties hereto, or their respective executors or administrators, touching these presents, or the construction hereof, or any division, compensation, valuation, act, or thing, to be made or done in pursuance hereof, or any matter in any way connected with these presents, or the operation hereof, the matter in difference shall be referred to the two arbitrators, or their umpire, pursuant to, and so as, with regard to the mode and consequence of the reference, and in all other respects, to conform to the provisions in that behalf contained in the Common Law Procedure Act, 1864, or any then subsisting statutory modification thereof.

IN WITNESS whereof, the said parties hereto have hereunto set their hands and seals, the day and year first above written.

Signed, sealed, and delivered by the above-	A. B.	(L.S.)
named A. B. and C. D. in the presence of	C. D.	(L.S.)
	E. F.	

*Notice to Determine Partnership.*

PURSUANT TO THE POWER for this purpose contained in certain articles of partnership dated the      day of      , and made between you of the one part, and me of the other part, I hereby



give you notice<sup>1</sup> that it is my intention to retire from the partnership now subsisting between us under the said articles, at the expiration of twelve calendar months, to be computed from the date hereof.

As witness my hand this                      day of                      .  
A. B.  
 To C. D.

## II. *Agreement for Sale and Purchase of a Practice.*<sup>2</sup>

AN AGREEMENT made and entered into, the                      day of                      , between A. B., of                      , in the county of                      , &c., of the one part, and C. D., of                      , in the county of                      , of the other part. WHEREAS the said A. B. has, for many years past, carried on the profession or practice of a surgeon and apothecary in aforesaid (in his own freehold premises, in which he also resides), and is desirous of disposing of the same, and of the goodwill thereof, AND WHEREAS the said C. D. is desirous of purchasing the same, at or for the price, and upon the terms hereinafter mentioned, NOW IT IS HEREBY AGREED between the parties hereto, as follows:—The said A. B. hereby agrees, in consideration of the sum of £                      , paid by the said C. D. to the said A. B., as follows, £                      , being one moiety thereof, upon the execution of these presents (the receipt whereof the said A. B. doth hereby acknowledge), and the other moiety, upon the                      day of                      , to sell, transfer, assign, and set over unto the said C. D. all interest, benefit, profit, and advantage whatsoever to him, the said A. B., to be from henceforth had, made, or obtained by or from the said profession or practice carried on by him in                      aforesaid, or of any of the patients now or hereafter belonging thereto (subject, as to one twelvemonth from the date hereof, to the stipulation or agreement hereinafter mentioned), and all the right and title of him, the said A. B., of, in, or to the said profession or practice, to have, hold, receive, and take all and singular the said interest, benefit, profit, and advantage to be from henceforth had, made, or obtained from the said profession or practice, and premises, in as full, large, and ample a manner, to all intents and purposes, as the

<sup>1</sup> If the notice be given under article 22, continue as follows: "That it is my desire that the partnership subsisting between us under the said articles shall cease and determine, from the date hereof, it having come to my knowledge that you, &c."

<sup>2</sup> A sixpenny stamp required. This may be denoted by an adhesive stamp, which must be cancelled by the person by whom the agreement is first executed.

said A. B. might have held and enjoyed the same, in case these presents had not been made. AND the said A. B. doth, for himself, his heirs, executors, administrators, and assigns, promise and agree to and with the said C. D., his executors, administrators, and assigns, in manner following, that is to say, that he, the said A. B., will not, at any time hereafter, either by or for himself, or with, by, or for any other person or persons, practise or carry on, or introduce any other person or persons to practise or carry on, the profession or business of a physician, surgeon, apothecary, accoucheur, or chemist, or druggist, within a distance of miles from aforesaid, without having first obtained the consent in writing of the said C. D., his executors, administrators, or assigns: AND FURTHER, that if he, the said A. B., shall so practise, or shall so introduce any other person or persons so to practise, at any time, without having first obtained such consent in writing, as aforesaid, he will pay to the said C. D., his executors or administrators, the sum of £ , for every month during which, or any part of which, he shall so practise, or during which any person so introduced by him shall so practise, by way of liquidated damages: AND FURTHER, that he, the said A. B., will, to the uttermost of his power, at all times from henceforth, introduce the said C. D. to his said profession or practice, and to the present patients of him, the said A. B., and, as far as practicable, to those who have hitherto employed him, the said A. B., as such surgeon and apothecary, and will do every reasonable act the said C. D. may deem necessary for the continuing and promoting the interest of the said concern, and furthering the professional success of the said C. D. in aforesaid, and the neighbourhood thereof: AND FURTHER, that he, the said A. B., will, if required by the said C. D., in writing, so to do, on or before the day of next, let the latter, on the day of next, into possession of the aforesaid freehold premises, as yearly tenant to the said A. B., at £ per annum, payable half-yearly, on the day of , and the day of , the first half-yearly payment to be made on the day of , or otherwise, will execute a lease thereof, at the like rent, for a term not exceeding years, or will absolutely convey the fee simple and inheritance thereof, free from incumbrances, at such price as may be mutually agreed between them, the said A. B. and the said C. D.: AND MOREOVER, that he, the said A. B., will, at any time prior to the

day of                      next, give to the said C. D. the option of buying, for the                      day of                      next, any of the household furniture, vehicles, and horses in and about the said premises, or used in working the said practice: AND FURTHER, that he, the said A. B., will, during the space of one year, to be computed from the day of the date hereof, continue to reside in aforesaid, and to carry on and attend to the said profession or practice, as he has hitherto done, and as if these presents had not been made, after which said period, he is to quit such practice entirely, according to the stipulation to that effect, hereinbefore mentioned: AND LASTLY, that he, the said A. B., will, at any time, if required by the said C. D. so to do, execute, at the expense of the said C. D., an assignment of the said practice, and such other and further assurances thereof as the said C. D. may be legally advised to require. AND THE SAID C. D., in consideration of the premises, hereby agrees to allow the said A. B., during such period of one year, from the day of the date hereof, one moiety of the clear profits of the said concern, to be paid at the expiration thereof: AND FURTHER, the said C. D., for himself, his executors, administrators, and assigns, further agrees to and with the said A. B., his executors, administrators, and assigns, that he the said C. D., his executors, administrators, or assigns, will pay, or cause to be paid, to the said A. B., his executors, administrators, or assigns, the sum of £                      , at the time hereinbefore in that behalf mentioned. AND IT IS FURTHER AGREED, by and between the parties hereto, that the drugs, stock-in-trade, utensils, and surgery fixtures of the said A. B., now upon the premises in aforesaid, shall be forthwith valued by a competent person, to be named and agreed to by the said A. B. and the said C. D., in the usual way, and the amount of such valuation shall be paid by the said C. D., his executors, administrators, or assigns, to the said A. B., his executors, administrators, or assigns, as follows, that is to say, one moiety thereof immediately the value of the said drugs, stock-in-trade, utensils, and fixtures shall be ascertained, in manner aforesaid, and the other moiety thereof, at the expiration of such period of one year, as aforesaid. AND IT IS MUTUALLY AGREED, by and between the parties hereto, that, should any doubt, difference, or dispute, at any time, arise between the parties hereto, or their representatives, touching these presents, or the construction hereof, or any clause or thing herein contained,



or any act or thing to be made or done in pursuance hereof, the matter in difference shall be referred to the two arbitrators, or their umpire, pursuant to, and so as, with regard to the mode and consequence of the reference, and in all other respects, to conform to the provisions in that behalf contained in the Common Law Procedure Act, 1854, or any then subsisting statutory modification thereof.

In witness whereof, the parties hereto have hereunto set their hands, the day and year first above written.<sup>1</sup>

A. B.

C. D.

Witness, E. F.

### III. *Indentures of Apprenticeship to a Surgeon and Apothecary.*<sup>2</sup>

THIS INDENTURE, made the            day of           , in the year of our Lord           , between A. B., of           , in the county of            (*father of apprentice*), of the one part, C. D. (*apprentice*), son of the said A. B., of the second part, and E. F. (*master*), of           , in the county of           , Member of the Royal College of Surgeons of England, and Licentiate of the Apothecaries' Company, London, of the third part, WITNESSETH that, in consideration of the sum of £           , paid by the said A. B. to the said E. F., the receipt whereof he, the said E. F., doth hereby admit and acknowledge, he, the said E. F., DOth, for himself, his executors, and administrators, covenant, promise, and agree with and to the said A. B. to accept the said C. D. as his apprentice, during the term of            years, in manner as follows:—That he, the said E. F., shall and will, according to the best of his power, skill, and knowledge, instruct the said C. D. in the profession of a surgeon and apothecary, and all and everything relating thereto; AND ALSO will, during the said term, find and provide the said C. D. with good and sufficient diet and lodging (his washing excepted), AND, moreover, shall and will permit and allow the said C. D. to attend such lectures, during the sessions in the aforesaid period, as are necessary and absolutely required by the Royal College of Surgeons of England, and the Apothecaries' Company, London. AND the

<sup>1</sup> See *Rawlinson v. Clarke*, 15 M. & W. 292.

<sup>2</sup> If there be no premium or consideration, this instrument will require a 2s. 6d. stamp. In any other case, stamps to the amount of 5s. for every £5, and also for any fractional part of £5, of the amount or value of the premium or consideration, must be affixed.

said A. B. and the said C. D., for themselves severally, and for their several executors and administrators, do, and each of them doth, covenant, promise, and agree with and to the said E. F. that the said C. D., from the date hereof, during the term of \_\_\_\_\_ years, shall and will truly and faithfully serve the said E. F. as his apprentice, AND shall and will, during such term, attend to the night-bell, and visit such patients, attend such cases of midwifery, keep such books, and compound, prepare, and dispense such medicines as the said E. F. may, from time to time, desire and request, and willingly obey all the lawful commands, and conform to all the rules and injunctions of the said E. F. ; AND shall not, nor will absent himself from the service of the said E. F. without the leave of the said E. F., AND shall and will return to the assistance of the said E. F. immediately after the conclusion of any lecture which he may be permitted and allowed to attend by the said E. F. ; AND shall not, nor will, haunt or frequent taverns, but in all things shall and will demean and behave himself towards the said E. F. as a good and faithful apprentice ought ; AND, MORE-OVER, shall not, nor will, at any time, either directly or indirectly, by himself, or with, by, or for any other person or persons, practise or follow the profession of a physician, surgeon, apothecary, or accoucheur, in \_\_\_\_\_ aforesaid, or within the distance of \_\_\_\_\_ miles from the same, without the consent in writing of the said E. F. (or, in case of his death, of his executors or administrators), first had and obtained ; and if he shall at any time so practise, without having first obtained such consent, will pay to the said E. F., &c., the sum of £ \_\_\_\_\_, to be recoverable by the said E. F., &c., as and for liquidated damages, the said sum of £ \_\_\_\_\_ having been specified by the said parties hereto as the amount to be paid and recoverable by the said E. F., &c., for the breach or non-observance, by the said C. D., of the said last-mentioned clause. AND the said A. B. doth hereby further agree that he shall and will, at all times during the said term, provide the said C. D. with suitable clothes, both linen and woollen, and all other necessities, except board and lodgings. AND it is hereby declared and agreed by and between the parties hereto, that, in case the said E. F. shall happen to die in the first or second year from the date hereof, the executors and administrators of the said E. F. shall pay the sum of £ \_\_\_\_\_, out of the said sum of £ \_\_\_\_\_ (*the premium*), to the said A. B., his executors, administrators, or assigns.

In witness whereof, the said parties hereto have hereunto set their hands and seals, the day and year first above written.

A. B.

(L.S.)

C. D.

(L.S.)

E. F.

(L.S.)

Signed, sealed, and delivered by the above-named A. B., C. D., and E. F. in the presence of

G. H.

IV. *Agreement between a Medical Man and Assistant.*<sup>1</sup>

AN AGREEMENT made and entered into this       day of       , in the year of our Lord       , between A. B., of       , in the county of       , Fellow of the Royal College of Surgeons of England, Licentiate of the Society of Apothecaries, London, &c., of the one part, and C. D., of       , in the county of       , student of medicine, of the other part. WHEREAS the said A. B. has, for some time past, practised, and is now practising his profession of a surgeon and apothecary, at       aforesaid, and the neighbourhood thereof, AND WHEREAS he requires assistance in carrying on his said profession, and the said C. D. has proposed to become his assistant therein, and such terms have been agreed on between them, in relation thereto, as are hereinafter contained: NOW THESE PRESENTS WITNESS that the said A. B. agrees to engage the said C. D. as his assistant in his said profession of a surgeon and apothecary at       aforesaid, and the neighbourhood thereof, and to pay him, for his services, a salary at and after the rate of £       per annum, by quarterly instalments, the first of such instalments to become due and payable on the day of       next ensuing, and also to provide him with suitable board and lodging: AND the said C. D., in consideration of the above salary and allowances to be paid to or received by him, by or from the said A. B., as aforesaid, hereby agrees faithfully to act as assistant to the said A. B. in his said profession, visiting such patients, attending such cases of midwifery, keeping such books, and compounding such medicines as the said A. B. shall, from time to time, desire and request: PROVIDED ALWAYS that either of the said parties shall be, at any time, at liberty to terminate this engagement, by giving to the other of them either one calendar

<sup>1</sup> A sixpenny stamp required. This may be denoted by an adhesive stamp, which must be cancelled by the person by whom the agreement is first executed.



month's notice of such his wish and intention, or one month's salary, in lieu thereof, and that, in case of such notice being given, the said C. D. shall only be entitled to his salary up to the time at which such notice shall actually expire, although it may be before the termination of the current quarter: AND the said C. D., for the considerations aforesaid, further agrees that he will not, at any time after the termination of the engagement hereby intended to be made, and his ceasing to be the assistant of the said A. B. in his said profession, either by, or for himself, or with, by, or for any other person or persons, practise, or follow the profession or business of physician, surgeon, apothecary, or accoucheur, or chemist, or druggist, in aforesaid, or within miles thereof,<sup>1</sup> without the consent in writing of the said A. B., or, in case of his death, of his executors or administrators.<sup>2</sup>

In witness whereof, the said parties hereto have hereunto set their hands, the day and year first above written.

A. B.

C. D.

Witness, E. F.

#### V. *Bond not to set up.*<sup>3</sup>

KNOW ALL MEN BY THESE PRESENTS that I, A. B., of , in the county of , am held and firmly bound to C. D., of , in the county of , his executors, administrators, and assigns, in the sum of £1,000, to be paid to the said C. D., his executors, administrators, or assigns, to which payment well and truly to be made I bind myself, my heirs, executors, and administrators, firmly, by these presents.

WHEREAS the said C. D. hath, for many years past, exercised and practised the profession or business of a surgeon and apothecary, at aforesaid; and whereas it hath been agreed between the

<sup>1</sup> See *ante*, p. 345.

<sup>2</sup> See pp. 344, 392, 395, 399.

<sup>3</sup> Bonds are required to be stamped as follows:—

						s.	d.
If the amount limited to be recoverable does not exceed	£25	..	0	8			
If such amount exceeds £25 and does not exceed	£50	..	1	3			
"	"	"	£50	"	"	£100	.. 2 6
"	"	"	£100	"	"	£150	.. 3 9
"	"	"	£150	"	"	£200	.. 5 0
"	"	"	£200	"	"	£250	.. 6 3
"	"	"	£250	"	"	£300	.. 7 6
In any other case	..	..	..	..	..	..	10 0

See 33 & 34 Vict. c. 97; and see *Mounsey v. Stephenson*, 7 B. & C. 403.

said C. D. and A. B., that the said A. B. shall become the assistant of the said C. D. in the exercise and practice of the said profession or business of a surgeon and apothecary, at the annual salary of £ , and, upon treating for the said agreement, it was further stipulated, that the said A. B. should enter into the bond or obligation hereinbefore written or contained: now, the condition of the above-written bond or obligation is such that if the above A. B. shall, either as principal or assistant, or, either alone, or in co-partnership with any person or persons whomsoever, exercise or practise, or assist in exercising or practising the said profession or business of a surgeon or apothecary, or either of them, either at aforesaid, or within the distance of miles in any direction of aforesaid, at any time after the termination of his said present engagement with the said C. D., without the consent in writing of the said C. D., or, in case of his death, of his executors or administrators, first had and obtained, then, and in such case, if the said A. B., his heirs, executors, or administrators, shall and do forthwith pay, or cause to be paid, to the said C. D., his executors, administrators, or assigns, the full sum of £500, then the said bond or obligation shall be void and of no effect, otherwise it shall remain in full force and virtue.

Sealed with my seal, and dated this day of , in the year of our Lord .

A. B. (L.S.)

Signed, sealed, and delivered by the above-named A. B., in the presence of

E. F.

G. H.

#### VI. *Contract between Guardians and Public Vaccinator.*<sup>1</sup>

ARTICLES OF AGREEMENT entered into this day of , one thousand eight hundred and , between of the one part, and the Guardians of the Poor of the Union, in the county of , of the other part.

WHEREAS the said guardians have, in pursuance of the several statutes in that behalf, with the approval of the Poor-law Board, divided the union aforesaid into districts for the purpose of vaccination, one of which districts comprises the parishes and places following, that is to say, , and have appointed the places mentioned in the schedule (A) hereto annexed, as con-

<sup>1</sup> Any modifications made in this contract, in any special case, must be submitted, for approval, to the Poor-law Board.

venient for the performance of such vaccination; and the said guardians have agreed with the said \_\_\_\_\_ to enter into a proper contract for the performance of the vaccination :

Now, therefore, the said \_\_\_\_\_ doth hereby covenant and agree with the said guardians and their successors that, from and after the \_\_\_\_\_ day of \_\_\_\_\_, he will attend, by himself, or some medical practitioner legally qualified for that purpose, as his substitute, at the times and places mentioned in the said schedule (A), or at such other times and places as the said guardians shall, with the consent of the Poor-law Board, determine, and cause to be endorsed thereon, and will, then and there, duly, and according to the requirements of the law, vaccinate every person resident in the district aforesaid who shall apply to, or be brought to him for the purpose of being vaccinated, and will do and perform all such acts and things as, to the best of his judgment, and in accordance with such requirements, shall seem necessary for the purpose of causing such vaccination to be successfully terminated ;

And will, in like manner, vaccinate any child resident out of his district whom any relieving officer of the said union shall, in writing, refer to him for vaccination ;

And will attend, at the times and places mentioned in the said schedule (A), to inspect the results of such vaccination in the persons so vaccinated, and will duly inspect such persons accordingly, and do such acts, and give such directions, and otherwise treat the cases as, upon such inspection, shall appear to him to be necessary ;

And will keep a book, to be termed the " Vaccinator's Register," to be provided for him by the said guardians, and will, as soon as practicable, after he shall have vaccinated any person to whom this contract shall apply, and as soon as practicable after he shall have inspected the results of the vaccination of such person, make the entries respectively applicable to the vaccination, and the inspection of the results described in the form set forth in the schedule (B) hereto annexed ; and will, on the day next before the first ordinary meeting of the said guardians in every calendar month [*or, quarter of the year, as may be agreed upon between the parties*], deliver, or cause to be delivered, to their clerk, the book in which he shall have made such entries during the interval preceding such meeting.

And the said guardians do, for themselves and their successors, covenant and agree with the said \_\_\_\_\_ as follows, that is



to say: to pay to him, his executors or administrators, within one calendar month after Lady Day, Midsummer Day, Michaelmas Day, and Christmas Day, respectively, during the subsistence of this contract, and within one month after its termination, for every person to whom this contract shall apply, upon whom, in accordance with the regulations of the Lords of the Council in force at the time, and all other requirements of the law, the operation of primary vaccination shall be successfully performed by the said \_\_\_\_\_, at the within-mentioned station, at \_\_\_\_\_, the same being situated at [*or within one mile from*] his residence by the nearest public carriage road, the sum of [*here insert the sum agreed upon, not less than 1s. 6d.*]; and for every such person so vaccinated at the within-mentioned station, at \_\_\_\_\_, the same being situated over one mile, and under two miles distant from such residence, the sum of [*here insert the sum agreed upon, not less than 2s.*]; and for every such person so vaccinated at the within-mentioned station, at \_\_\_\_\_, the same being situated over two miles from such residence, the sum of [*here insert the sum agreed upon, not less than 3s.*]; and, further, to pay to him, his executors or administrators, at the times hereinbefore mentioned, the sum of \_\_\_\_\_ in respect of every person to whom this contract shall apply, upon whom the operation of primary vaccination shall be successfully performed, in accordance with such regulations and requirements, as aforesaid, by the said \_\_\_\_\_, elsewhere than at a station herein mentioned.

And it is hereby mutually agreed by and between the parties hereto, that no sum of money shall be paid to the said \_\_\_\_\_ in respect of any person whose name, together with the other particulars relating to the case, shall not be duly entered in the said register, except in the case of any omission, which shall be explained to the satisfaction of the said guardians.

And it is hereby mutually agreed that this contract may be put an end to by either of the parties hereto, on giving twenty-eight days' notice in writing to the other party, respectively, of the intention to put an end to the same.

Provided always, that the said \_\_\_\_\_ shall not be entitled to be paid his account, from time to time to be rendered, of fees for cases of vaccination, unless he shall have punctually attended at the times and places for the purposes of vaccination, as stated in the schedule (A) hereto annexed, and also shall have duly and punctually

registered and certified in relation to vaccination (as he is required to do by the Vaccination Act, 1867) in respect of every person who shall have applied to him for such purpose during the whole period, or quarter of a year, to which his account or claim for fees, from time to time rendered to the said guardians, shall relate.

SCHEDULES referred to in the above articles of agreement.

Schedule (A).

Times and Places appointed for Vaccination and Inspection, respectively.			
Times.			Places.
Day of attendance.		Hours of the day.	
For Vaccination.	For Inspection.		At the residence of the
	<i>This must be the same day in the following week.</i>		said _____
			at _____
			At _____
			At _____





In witness whereof the said \_\_\_\_\_ hath hereunto set his  
hand and seal, and the said guardians their common seal, the day  
and year first above written.

Signed, sealed, and delivered by the }  
above-named,—in the presence of—)

The common seal of the guardians of the above-named union was hereto affixed, at a meeting of the Board of Guardians held on the day of the date hereof, by \_\_\_\_\_, chairman of the Board, at the said meeting, in the presence of \_\_\_\_\_

A. B.,

*Clerk to the Guardians of the said Union.*





## VIII.—“Register of Discharges and Deaths,” to be kept in Private Lunatic Asylums.

(See page 307, ante.)

*Register of Discharges and Deaths.*

Date of discharge, or death.	Date of last admission.	No. in register of patients.	Christian and Surname, at length.	Sex and Class.				Discharged.					Died.		Assigned Cause of Death.	Age at Death.		Observations.
				Private.		Pauper.		Recovered.	Relieved.		Not Im- proved.	Died.						
				M.	F.	M.	F.		M.	F.		M.	F.	M.		F.		
1846 Sept. 1	1846 Jan. 3	1	William Johnson..	..	1	..	1	1										
1848 Dec. 2	1848 June 9	4	William Johnson..	..	1	..	1	1										
1853 June 8	1852 May 6	7	William Johnson..	..	1	..	1	..	..	..	..	..	1	..	Phthisis	27		



*Sec. IV.—Chronological Index to the principal Statutes relating to, or directly affecting, Members of the Medical Profession, including Chemists and Druggists.<sup>1</sup>*

1421.—9 Hen. V.

The following is the draft Act. It is not found in the Statute-book, and seems never to have had the effect of an Act of Parliament:—

“No one shall use the mysterie of fysyk, unless he hath studied it in some university, and is, at least, a bachelor in that science. The sheriff shall inquire whether any one practises in his county contrary to this regulation; and if anyone so practise, he shall forfeit £40 and be imprisoned. And any woman who shall practise fysyk shall incur the same penalty. It is ordered in Parliament, on this petition, That the Lords of the Privy Council shall make what regulations they shall think proper.”

1511.—3 Hen. VIII. c. 11.

“An Act concerning physicians and surgeons.”

1513.—5 Hen. VIII. c. 6.

“An Act that surgeons be discharged of constableness, and other things.” (Rep. in part, 6 Geo. IV. c. 50, s. 62.)

1522.—14 & 15 Hen. VIII. c. 5.

“An Act concerning physicians.” (Rep. in part, 23 & 24 Vict. c. 66, s. 5.)

1540.—32 Hen. VIII. c. 40.

“An Act concerning the privileges of physicians.”

1540.—32 Hen. VIII. c. 42.

“An Act concerning barbers and surgeons to be of one company.”

1542.—34 & 35 Hen. VIII. c. 8.

“An Act that persons, being no common surgeons, may administer outward medicines.”

1553.—1 Mar. sess. 2, c. 9.

“An Act touching incorporations of the physicians in London.”

1605.—3 Jac. I. c. 5. s. 8.

“Popish recusants not to practise physic, or use or exercise the trade or art of an apothecary, under a penalty of £100.” (Rep. 7 & 8 Vict. c. 102.)

1694.—6 & 7 Gul. & Mar. c. 4.

“An Act for exempting apothecaries from serving the offices of constable, scavenger, and other parish and ward offices, and from serving upon juries.” (Made perpetual, 9 Geo. I. c. 8, s. 1; rep. in part, 6 Geo. IV. c. 50, s. 62, and 30 & 31 Vict. c. 59.)

1723.—10 Geo. I. c. 20.

“An Act for the better viewing, searching, and examining of all drugs, medicines, waters, oils, compositions, used, or to be used, for

<sup>1</sup> See, also, the various Lunacy Acts, collected *ante*, chap. vii., sec. 6, p. 311.

medicines, in all places where the same shall be exposed to sale, or kept for that purpose, within the city of London and suburbs thereof, or within seven miles' circuit of the said city." (For three years; continued for three years further, 13 Geo. I. c. 27, s. 3. Repealed, 30 & 31 Vict. c. 59.)

1743.—16 Geo. II. c. 8, s. 12.

"Physicians, apothecaries, surgeons, and chemists, exempted from payment of duty on spirits and spirituous liquors used in the preparation or making up of medicines."

1745.—18 Geo. II. c. 15.

"An Act for making the surgeons of London and the barbers of London two separate and distinct corporations." (Rep. in part, 30 & 31 Vict. c. 59.)

1783.—23 Geo. III. c. 62.

"An Act for granting to his Majesty a stamp duty on licences to be taken out by certain persons uttering or vending medicines; and certain stamp duties on all medicines sold under such licences, or under the authority of his Majesty's letters patent." (Duties repealed, 25 Geo. III. c. 79, s. 1. Act rep. 24 & 25 Vict. c. 101.)

1785.—25 Geo. III. c. 79.

"Other duties granted in lieu of those granted by 23 Geo. III. c. 62." (Rep. in part, 42 Geo. III. c. 56, s. 1, residue spent.)

1787.—27 Geo. III. c. 65.

"An Act for confirming a charter or letters patent granted by his Majesty to the Royal College and Corporation of Surgeons of the city of Edinburgh, so far as relates to a scheme for raising a fund for a provision for the widows and children of the members of the said corporation, and of their clerk, with certain alterations, and for establishing the said scheme, and empowering the corporation and the trustees and officers elected for managing the fund effectually to carry the said scheme into execution." (See *post*, "Local and Personal Acts," 53 Geo. III. c. lxxvi.)

1802.—42 Geo. III. c. 56.

"An Act for charging other duties in lieu of those granted by 25 Geo. III. c. 79, and for making effectual provision for the better collection of the said duties." (Rep. in part, 43 Geo. III. c. 73. Duties repealed, 24 & 25 Vict. c. 101.)

1803.—43 Geo. III. c. 73.

"An Act to amend 42 Geo. III. c. 56."

1804.—44 Geo. III. c. 98, sch. (B.)

"*Ad valorem* stamp duties imposed on certain medicines." (Rep. 52 Geo. III. c. 150.)

1812.—52 Geo. III. c. 150.

"An Act to amend 44 Geo. III. c. 98." (Rep. in part, 3 & 4 Will. IV. c. 97, s. 20.)

1815.—55 Geo. III. c. 194.

"An Act for better regulating the practice of apothecaries throughout England and Wales."

1825.—6 Geo. IV. c. 50, s. 2.

“Physicians, surgeons, and apothecaries exempted from serving on juries.”

1825.—6 Geo. IV. c. 133.

“An Act to amend and explain 55 Geo. III. c. 194.” (Expired.)

1832.—2 & 3 Gul. IV. c. 75.

“An Act for regulating schools of anatomy.” (Rep. in part, 4 & 5 Gul. IV. c. 26, s. 1. See terms of repeal, 24 & 25 Vict. c. 95, s. 1.)

1833.—3 & 4 Gul. IV. c. 92.

“An Act to explain and amend the provisions of certain Acts for the erecting and establishing public infirmaries, hospitals, and dispensaries in Ireland.”

1836.—6 & 7 Gul. IV. c. 89.

“An Act to provide for the attendance and remuneration of medical witnesses at coroners’ inquests.” (Rep. in part, 7 Gul. IV. & 1 Vict. c. 68, s. 2.)

1837.—7 Gul. IV. & 1 Vict. c. 68, s. 2.

“Coroners to pay medical witnesses.”

1851.—14 & 15 Vict. c. 13.

“An Act to regulate the sale of arsenic.”

1851.—14 & 15 Vict. c. 68.

“An Act to provide for the better distribution, support, and management of medical charities in Ireland.”

1851.—14 & 15 Vict. c. 99, s. 8.

“Apothecaries’ certificates admissible in evidence, without proof of seal.”

1852.—15 & 16 Vict. c. 56.

“An Act for regulating the qualifications of pharmaceutical chemists.”

1854.—17 & 18 Vict. c. 114.

“An Act to extend the rights enjoyed by the graduates of the universities of Oxford and Cambridge, in respect to the practice of physic, to the graduates of the University of London.”

1855.—18 & 19 Vict. c. 116.

“An Act for the better prevention of diseases.” (Rep. in part, 23 & 24 Vict. c. 77, s. 10.)

1858.—21 & 22 Vict. c. 90.

“An Act to regulate the qualifications of practitioners in medicine and surgery.” (Rep. in part, 22 Vict. c. 21, ss. 2 and 3.)

1859.—22 Vict. c. 21.

“An Act to amend the Medical Act (1858).”

1859.—22 & 23 Vict. c. 36, s. 2.

“The stamp duty on licences to exercise the faculty of physic repealed.”

1860.—23 Vict. c. 7.

“An Act to amend the Medical Acts.”

1860.—23 & 24 Vict. c. 66.

“An Act to amend the Medical Act (1858).”



1860.—23 & 24 Vict. c. 77.

“An Act to amend the Acts for the removal of nuisances, and the prevention of diseases.” (Rep. in part, 29 & 30 Vict. c. 41, s. 1; 29 & 30 Vict. c. 90, s. 17.)

1862.—25 & 26 Vict. c. 15.

“An Act to define the powers of the president and fellows of the King and Queen’s College of Physicians in Ireland, with respect to the election of its fellows.”

1862.—25 & 26 Vict. c. 91.

“An Act to incorporate the General Council of Medical Education and Registration of the United Kingdom, and for other purposes.”

1862.—25 & 26 Vict. c. 107, s. 2.

“Registered pharmaceutical chemists exempted from serving on juries.”

1864.—27 & 28 Vict. c. 60.

“An Act to enable her Majesty to grant a lease for 999 years of the building known as the College of Physicians in Pall Mall East.”

1866.—29 & 30 Vict. c. 90.

“An Act to amend the law relating to the public health.”

1867.—30 & 31 Vict. c. 9.

“An Act to open the professorships of anatomy and chirurgery, chemistry and botany, in the University of Dublin, to all persons, irrespective of their religious creed.”

1867.—30 & 31 Vict. c. 84.

“An Act to consolidate and amend the laws relating to vaccination.”

1867.—30 & 31 Vict. c. 101.

“An Act to consolidate and amend the law relating to the public health in Scotland.”

1868.—31 & 32 Vict. c. 29.

“An Act to amend the law relating to medical practitioners in the colonies.”

1868.—31 & 32 Vict. c. 74.

“An Act to extend the powers of Poor-law inspectors, and medical inspectors in Ireland.”

1868.—31 & 32 Vict. c. 121.

“An Act to regulate the sale of poisons, and alter and amend the Pharmacy Act (1852).” (Rep. in part, 32 & 33 Vict. c. 117, s. 4.)

1869.—32 & 33 Vict. c. 50.

“An Act to provide for superannuation allowances to medical officers of Poor-law unions, and of dispensary districts of such unions in Ireland.”

1869.—32 & 33 Vict. c. 117.

“An Act to amend the Pharmacy Act (1868).”

1870.—33 & 34 Vict. c. 26.

“An Act to regulate the sale of poisons in Ireland.”

1870.—33 & 34 Vict. c. 94.

“An Act to provide for superannuation allowances to medical officers of unions, districts, and parishes in England and Wales.”

1871.—34 Vict. c. 16.

“An Act to amend an Act of the second and third years of William the Fourth, chapter seventy-five, for regulating schools of anatomy.”

*Local and Personal Acts declared Public, but not Printed with the Public General Acts.*

1813.—53 Geo. III. c. lxxvi.

“An Act for altering and amending an Act made in the 27th year of his present Majesty for confirming a charter or letters patent granted by his Majesty to the Royal College and Corporation of Surgeons of the city of Edinburgh, and for establishing a fund for a provision to the widows and children of the members of the said corporation, and their clerk.”

1814.—54 Geo. III. c. cxviii.

“An Act to enable the president and college or commonalty of the Faculty of Physic in London to hold their corporate meetings within the city of Westminster, or the liberties thereof.”

1850.—13 & 14 Vict. c. xx.

“An Act for better regulating the privileges of the Faculty of Physicians and Surgeons of Glasgow, and amending their charter of incorporation.”

1850.—13 & 14 Vict. c. xxiii.

“An Act for enabling her Majesty to grant a new charter to the Royal College of Surgeons of Edinburgh, and for conferring further powers upon the said college.”

1855.—18 & 19 Vict. c. clxvi.

“An Act to incorporate the Royal Medical Benevolent College, and for other purposes.”

*Statutes passed in the Parliaments held in Ireland.*

1735.—9 Geo. II. c. 10.

“An Act for preventing frauds and abuses committed in the making and vending unsound, adulterated, and bad drugs and medicines.” (Continued, 11 Geo. II. c. 13, and 21 Geo. II. c. 7.)

1761.—1 Geo. III. c. 14.

“An Act for preventing frauds and abuses in the vending, preparing, and administering drugs and medicines.” (Made perpetual, 30 Geo. III. c. 45, s. xi.)

1765.—5 Geo. III. c. 20.

“An Act for erecting and establishing public infirmaries or hospitals in this kingdom.” (Provisions extended by 21 & 22 Geo. III. c. 13; 25 Geo. III. cc. 39 and 40, and 36 Geo. III. c. 9. See also 3 & 4 Will. IV. c. 92.)

1785.—25 Geo. III. c. 42.

“An Act for establishing a complete school of physic in this kingdom.”

1791.—31 Geo. III. c. 34.

“An Act for the more effectually preserving the health of his Majesty’s subjects, for erecting an Apothecaries’ Hall in the city of Dublin, and regulating the profession of an apothecary throughout the kingdom of Ireland.”

1791.—31 Geo. III. c. 35.

“An Act to explain and amend an Act, entitled ‘An Act for Establishing a complete School of Physic in this Kingdom.’”

1795.—35 Geo. III. c. 22.

“An Act to explain an Act, entitled ‘An Act for Establishing a complete School of Physic in this Kingdom.’”

1800.—40 Geo. III. c. 84.

“An Act for repealing an Act passed in the 25th year of his present Majesty, entitled ‘An Act for Establishing a complete School of Physic in this Kingdom;’ and also for repealing an Act passed in the 31st year of his present Majesty, entitled ‘An Act to explain and amend an Act for Establishing a complete School of Physic in this Kingdom;’ and also for extending and enlarging the powers of the president and fellows of the King and Queen’s College of Physicians, and establishing a complete school of physic in this kingdom.”

*Sec. V.—Alphabetical List of the Principal Authorities on Medical Jurisprudence.*

*Anglada, J.*—*Traité de Toxicologie Générale, envisagée dans des rapports avec la Physiologie, la Pathologie, la Thérapeutique, et la Médecine légale.* Revu et publié par C. Anglada, M.D., et fils de l’auteur. Paris, 1835.

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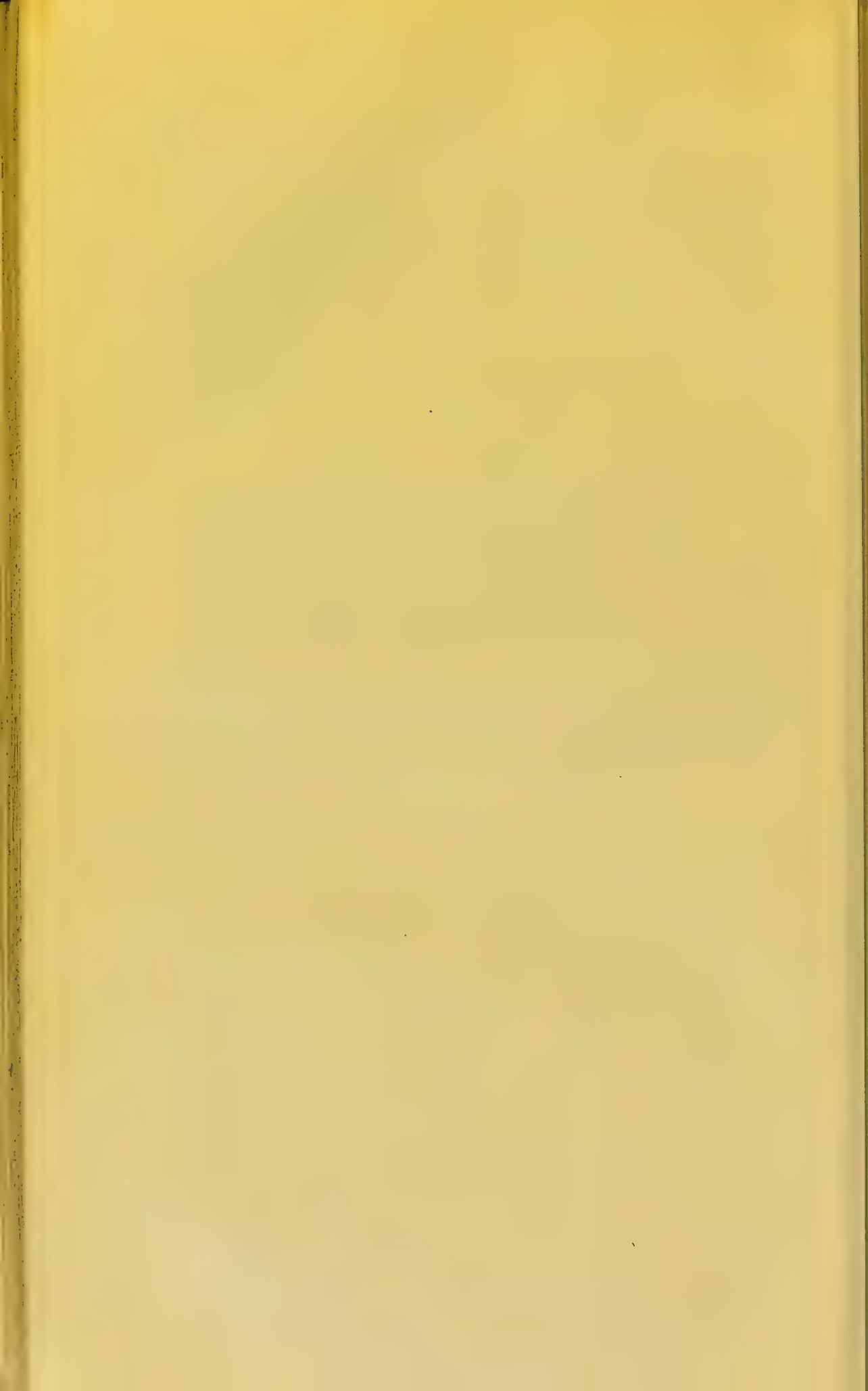
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